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THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 1

WEDNESDAY, MAY 22, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESS:

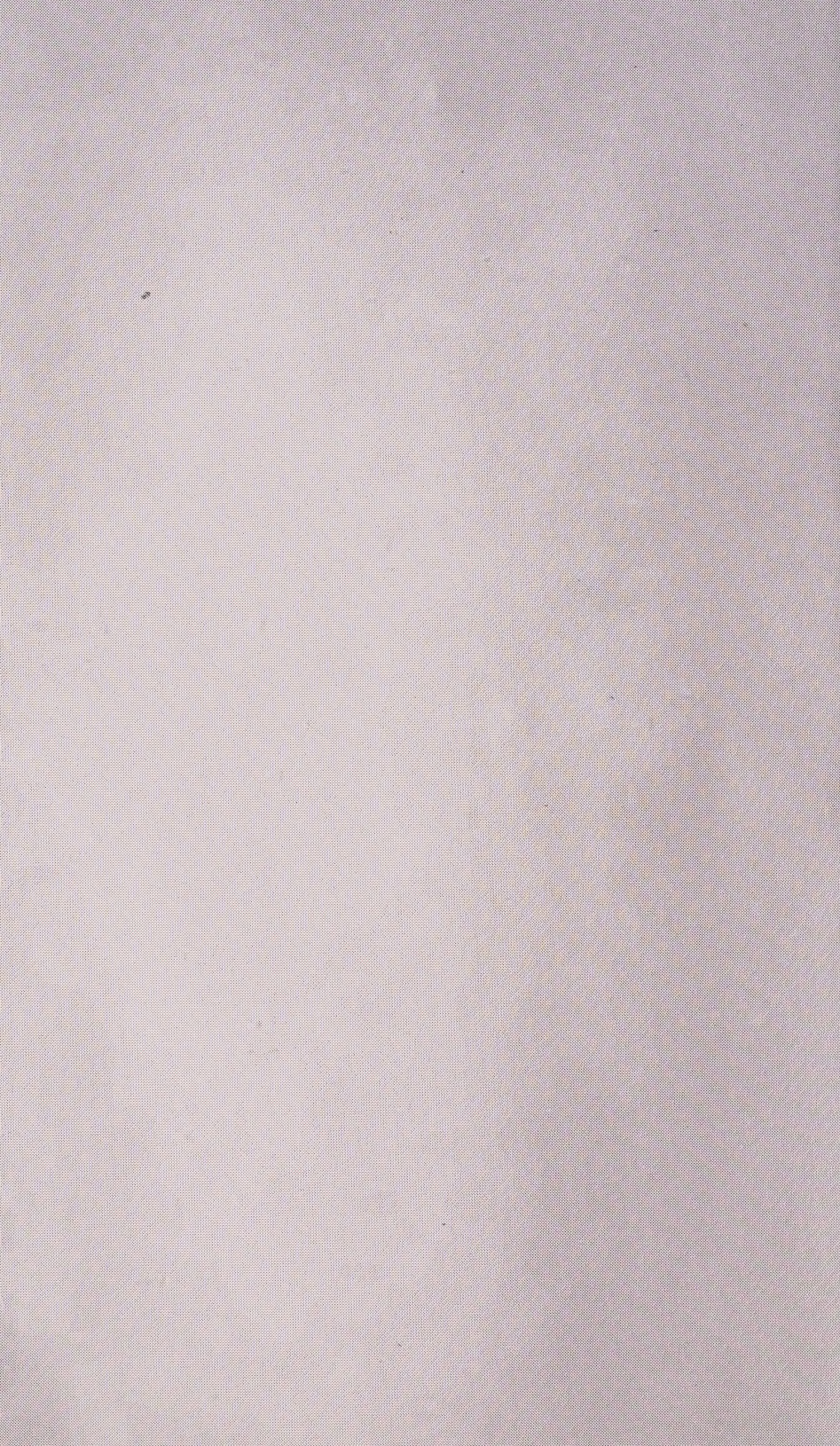
Mr. W. J. Reilley, K.C., Superintendent, Bankruptcy Act
Administration, Department of Secretary of State.

OTTAWA

EDMOND CLOUTIER

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1946



ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	McRae
Laubien (Montarville)	Foster	Michener
Beauregard	Gershaw	Molloy
Buchanan	Gouin	Morand
Burchill	Haig	Murdock
Campbell	Hardy	Nicol
Copp	Hayden	Paterson
Crozier	Howard	Quinn
Daigle	Hugessen	Raymond
David	Jones	Riley
Dessureault	Kinley	Robertson
Donnelly	Lambert	Sinclair
Duff	Leger	White
DuTremblay	MacDonald (Cardigan)	Wilson—(48).



MINUTES OF PROCEEDINGS

THURSDAY, 16th May, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senator Beauregard, Chairman; The Honourable Senators Ballantyne, Buchanan, Campbell, Côté, Girard, Desjardins, Donnelly, Euler, Fallis, Farris, Foster, Gershaw, Haig, Hoggan, Lambert, Léger, Macdonald (*Cardigan*), McGuire, McRae, Molloy, Morand, Murdock, Paterson, Robertson, Sinclair, White and Wilson.—28.

Bill A-5—"An Act respecting Bankruptcy," was read and considered.

Mr. W. J. Reilley, K.C., Superintendent, Bankruptcy Act Administration, Department of Secretary of State, was heard in explanation of certain features of the Bill.

Further consideration of the Bill was postponed.

At 12.55 p.m., the Committee adjourned to the call of the Chairman.

ATTEST.

R. LAROSE

(Clerk of the Committee)

WEDNESDAY, 22nd May, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11 a.m.

Present: The Honourable Senator Farris, Acting Chairman; The Honourable Senators Aseltine, Ballantyne, Buchanan, Côté, Girard, Daigle, Desjardins, Duff, DuTremblay, Foster, Gouin, Haig, Hayden, Kinby, Lambert, Léger, Macdonald (*Cardigan*), McGuire, Molloy, Morand, Paterson, Robertson and Sinclair.—25.

In attendance: The Official Reporters of the Senate.

Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel of the Senate.

The Honourable Senator Farris was appointed Acting Chairman, and took the Chair.

Bill A-5—"An Act respecting Bankruptcy," was again considered.

Mr. W. J. Reilley, K.C., Superintendent, Bankruptcy Act Administration, Department of Secretary of State, was again heard.

On Motion of the Honourable Senator Morand, seconded by the Honourable Senator Aseltine, it was,—

RESOLVED, to report to the Senate recommending:—That the Committee be authorized to print 1,000 copies in English and 400 copies in French of its day to day proceedings on the Bill A-5, intitled: "An Act respecting Bankruptcy," and that Rule 100 be suspended in relation to the said printing.

At 1 p.m., the Committee adjourned until Tuesday, 28th instant, at 10.30 a.m.

ATTEST.

R. LAROSE,

Clerk of the Committee.



MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Wednesday, May 22, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A-5, an Act respecting Bankruptcy, met this day at 11 a.m.

Hon. Mr. FARRIS (Acting Chairman) in the Chair.

The Acting CHAIRMAN: Mr. Reilley, the last time you were here you dealt with the question of decentralization, and we will secure that from you in more detail later. Do you recall what further headings you dealt with?

Mr. W. J. REILLEY, K.C. (Superintendent of the Bankruptcy Act Administration): I mentioned the intended changes in regard to compositions.

The Acting CHAIRMAN: Part II of the bill.

Mr. REILLEY: Yes, beginning with section 11.

The Acting CHAIRMAN: This is so important, gentlemen, that I think we had better start all over again.

Hon. Mr. HAIG: All right.

Hon. Mr. MORAUD: I suppose you will have a certain number of copies of this report printed?

The Acting CHAIRMAN: Perhaps you would make a motion.

Hon. Mr. MORAUD: I would make a motion that a thousand copies of the proceedings be printed in English and four hundred copies in French.

The Acting CHAIRMAN: Are you agreeable, gentlemen?

Some Hon. MEMBERS: Carried.

The Acting CHAIRMAN: Part II, Mr. Reilley begins at page 13 and runs to page 24. It deals with composition, extension or scheme of arrangement. You might state to us what are the existing factors as to compositions and then give us the essential changes.

Hon. Mr. ASELTINE: Would this be similar to the provisions of the Farmers Creditors' Arrangement Act?

Mr. REILLEY: In some respects.

Hon. Mr. ASELTINE: That is the objection that most of us have to the proposed changes.

Mr. REILLEY: The present law is that a proposal for composition can only be made after bankruptcy occurs. Originally when the Act was passed in 1919 a composition could be offered before bankruptcy by any man in financial embarrassment. He could get his creditors together, and if the proposal was approved it went to the court, and then it became binding on all the creditors. That was eliminated in 1923 by reason of the fact that there was so much dishonesty connected with these proposals, with no method of checking up or appraisal to find out whether they were fair or not. So after that time if a man wanted to make a proposal to his creditors he had first to go into bankruptcy. I think all of you know that bankruptcy of itself almost inherently depreciates the possibility of a proposal going through. At once bankruptcy depreciates a man's assets by a very considerable percentage, and consequently when it gets to that stage the possibility of making a proposal and getting it through is much less, and also his own chances of carrying the proposal through have been very much affected.

The Acting CHAIRMAN: What are the changes you propose should be made?

Mr. REILLEY: The change I propose is merely to permit any person under the Act to make a proposal with his creditors before bankruptcy.

Hon. Mr. MORAUD: That is to restore the 1919 conditions.

Mr. REILLEY: Yes. The trouble with the original Act of 1919 was that there was no way of checking on the debtor. If he could conceal or cheat his creditors, there was no way of getting at whether or not he was doing so. Where you have a body of creditors acting together like that no one of them just wants to take the necessary steps to delve into the situation sufficiently to find out what the facts are.

Hon. Mr. EULER: How do you propose to guard against that now?

Mr. REILLEY: By the fact that the proposal has to be made to a licenced trustee, who will be required to make an appraisal and investigation of the debtor's affairs and report to the creditors at the meeting.

Hon. Mr. MORAUD: You have not that safeguard now.

Mr. REILLEY: I think it is about the only safeguard you can find. I do not know of any other one that could be inserted. In those days of course trustees were a very different type of men from the trustees of to-day, who, generally speaking, I think are pretty honourable men.

The Acting CHAIRMAN: You explained to us at the last meeting that in 1932 two changes were made in the Act. One was to provide for a superintendent in the set-up. That is yourself.

Mr. REILLEY: Yes.

The Acting CHAIRMAN: And the second was, you were given power to licence trustees annually.

Mr. REILLEY: Yes.

The Acting CHAIRMAN: You have power to revoke or refuse licences.

Mr. REILLEY: Yes.

Hon. Mr. HAIG: And the trustees are bonded.

Mr. REILLEY: Yes, they are bonded.

The Acting CHAIRMAN: You have had an experience of thirteen or fourteen years in building up an organization of licensed trustees.

Mr. REILLEY: Yes.

Hon. Mr. ASELTIME: Are these trustees usually trust companies?

Mr. REILLEY: Well, all of the trust companies have licences, but the majority of them have very few bankruptcy cases. Most of the bankruptcy cases are handled by private trustees.

Hon. Mr. MORAUD: I understood you to say at the last meeting that trustees might be influenced by the debtor. After all, the debtor goes to the trustee first, the creditors come afterwards; so the trustee is the debtor's man instead of the creditors'. Are you not afraid that in a case of a composition like this the trustee might work more for the debtor than for the creditors?

Mr. REILLEY: Well, that was the opinion held in regard to trustees generally, that they always acted for the debtor. But I think most trustees today are pretty well aware of the fact that if they lend themselves to any shady scheme, and I find any inkling of it, they know just about where they stand.

Hon. Mr. EULER: What greater protection have the creditors if the debtor has to go through bankruptcy proceedings than they will have if this trustee is empowered to go and ascertain all the assets?

Mr. REILLEY: None whatever.

Hon. Mr. HAIG: Yes. Under bankruptcy you can examine the debtor under oath.

Mr. REILLEY: He can be examined under oath at the meeting of creditors if you want it. I have just forgotten whether I have that in or not, but you could put that in.

Hon. Mr. EULER: So that protection would be as great under your proposal as in bankruptcy?

Mr. REILLEY: Yes.

Hon. Mr. HAIG: In bankruptcy if creditors think the debtor has assets which he has not disclosed they can have him examined under oath.

The Acting CHAIRMAN: Once the debtor submits himself to the trustee under the new section the same procedure would follow.

Hon. Mr. HAIG: It was not so in 1919.

Mr. REILLEY: I answer that question by this section that I have put in the bill.

The Acting CHAIRMAN: Which is it?

Mr. REILLEY: Section 13:

"If the creditors by a ten per cent vote of those voting in person or by proxy at the meeting"—

I have put that down to 10 per cent, which is a sufficiently low percentage to give them the right to a further investigation.

Hon. Mr. HAIG: 10 per cent in value or in number?

Mr. REILLEY: Any creditor by proxy or in person may vote.

The Acting CHAIRMAN: It is number, not value.

Mr. REILLEY: Yes, number, not value. This is the new section 13.

(1) If the creditors by a ten per cent vote of those voting in person or by proxy at the meeting at which a proposal is being considered require the meeting shall be adjourned to such time and place as may be fixed by the chairman,

(a) to enable such further appraisal and investigation of the affairs and property of the debtor to be made as may be deemed advisable in which case the information thereby obtained shall be incorporated in a report and placed before the adjourned meeting or may be used in court on the application for approval of the proposal.

(b) for the examination under oath of the debtor or of such other person as may be believed to have knowledge of the affairs or property of the debtor as elsewhere provided in this Act. The testimony of the debtor or such other person, if transcribed, shall be placed before the adjourned meeting or may be read in court upon the application for the approval of the proposal.

(2) The court if not satisfied with the report or the testimony of the debtor or such other person may direct that such further investigation be made as it may deem advisable or that the debtor or such other person attend before the court for further examination.

Hon. Mr. EULER: I am not a lawyer, but after all this is only common sense. You say the creditors would have the same protection by the appointment of a trustee as they would have if the debtor went into bankruptcy?

Mr. REILLEY: I think so.

Hon. Mr. EULER: They would not labour under any of the defects of bankruptcy?

Mr. REILLEY: That is the idea.

Hon. Mr. ASELTINE: But the trustee has no power to examine the debtor under oath prior to the meeting of creditors.

Mr. REILLEY: No, he has no power to examine under oath. I have there given him the duty of making an appraisal. He is expected to do that reasonably well.

Hon. Mr. MORAUD: We should give more power to the court, so as not to leave the position entirely in the hands of the trustee.

Mr. REILLEY: My opinion is that they should go first to the court for leave to file a proposal, but I wanted to get away from too many technicalities and too much formality. I thought that with the system of trustees we have to-day they could be relied on generally to give pretty fair protection to the creditors. As I said before, as long as the trustee is just not living up to the requirements, he has to answer to me at the end of the year, and some have found that a pretty hard testing.

Hon. Mr. MORAUD: I have in mind a case of dishonesty. If a man comes to me for advice. I as a lawyer am inclined to help him out; and the trustee is in about the same position. The debtor goes to him for advice and says, "I am in a bad fix. What can I do about it?" The trustee, of course, is inclined to help him out. Sometimes helping the debtor out would not be in the best interests of the creditors. So I am wondering whether it would not be better for the trustee and everybody else concerned if in all cases the registrar or the court were given authority as to final approval of any proposal.

Mr. REILLEY: Every proposal, even if approved by the creditors, has to go before the court for approval, and every creditor has a right to appear there.

Hon. Mr. HAIG: Mr. Reilley, we have had this whole procedure in proceedings in my province under the Farmers Creditors' Arrangement Act. The registrar is always on the side of the debtor, and you have great difficulty in getting him even to admit that the assets are worth more. In Saskatchewan he started on the theory that the debtor was right 100 per cent and the creditors were wrong 100 per cent, and he valued the farm at about a quarter or a half or a third of what it was worth, and you could not get away from that. That is what we are scared about in regard to these provisions.

Mr. REILLEY: I do not know, senator, that any law could be set up to remedy bias on the part of the court, and if a registrar or anybody else—

Hon. Mr. HAIG: That is the tendency under the Farmer Creditors' Arrangement Act. I am only one, but I shall not let this bill go through and have perpetrated on the creditors of this country what the Farmers Creditors' Arrangement Act has perpetrated on the creditors of Manitoba and Saskatchewan. Your system is the same.

Mr. REILLEY: No.

Hon. Mr. McGUIRE: There is the superintendent over the trustee here; there is not over the registrar in the other case.

Mr. REILLEY: There is one of your answers. There is no intervening authority under the Farmers Creditors' Arrangement Act to see that the duties to be performed under the Act are performed properly.

Hon. Mr. ASELTINE: Would not the trustee under these proceedings be in the same position as the official receiver under the Farmers Creditors' Arrangement Act?

Mr. REILLEY: No.

Hon. Mr. ASELTINE: As Senator Haig has stated, the Official Receiver is 99 per cent of the time on the side of the farmer debtor.

Mr. REILLEY: Yes, I know. I have not any comments to make on the Farmers Creditors' Arrangement Act. I was opposed to it very violently when it went through, and I am still.

Hon. Mr. ASELTINE: But you are incorporating a great deal of the same procedure in this bill.

Mr. REILLEY: My idea of this, gentlemen, is that bankruptcy in itself is destructive.

Hon. Mr. HAIG: We agree with you there.

Mr. REILLEY: This is the only procedure that I have ever heard of whereby you can proceed in this way. In England the procedure is this: a receiving order is made—it is not an adjudication of bankruptcy, but just an interim order—and after that is made the Official Receiver makes an investigation of the debtor's affairs and examines him; then it comes to the creditors' meeting, and at that meeting he is asked, Are you willing or ready to make a proposal to your creditors. There is not any bankruptcy yet. There is an order, to be sure, saying he has committed an act of bankruptcy, but everybody has who gets into that position. At the meeting of creditors if no composition is proposed, they go back to the court and get an adjudication of bankruptcy—what they call an adjudication order. So there are two orders, and then the intervening period when the debtor is given an opportunity to make a composition.

Hon. Mr. ASELTINE: Under this bill who prepares the proposal, the trustee?

Mr. REILLEY: It would be prepared by the debtor, I suppose.

The ACTING CHAIRMAN: Is there any particular reason why the condition Senator Haig mentioned would be applicable to farmers, but might not be generally applicable to ordinary business?

Hon. Mr. HAIG: What I am afraid of is this. No one creditor wants to make a row, because he thinks the debtor may get on his feet again and may be a good outlet for business. I am not afraid of the 75 or 85 or even 99 per cent of people who are honest; it is the dishonest debtor I am worried about leaving his creditors. You do think that in 1919 it was rampant?

Mr. REILLEY: Yes.

Hon. Mr. HAIG: I know about that, for we had a big practice in bankruptcy proceedings at that time.

Mr. REILLEY: All I can say is it was rampant between 1919 and 1923. The changes after that did not remedy the situation very much until 1932. Before that period, you know, dishonesty was very rampant, but from 1932 on you have not heard very much about dishonesty in bankruptcy.

Hon. Mr. HAIG: I admit that.

Mr. REILLEY: Whether the superintendent's control is entirely responsible for that I am not going to say; I leave it to the public to judge. That control has effected a very considerable remedy of the situation.

Hon. Mr. HAIG: Of course, your 10 per cent vote is a very fine provision; that gives the kickers a pretty good show.

Hon. Mr. McGUIRE: The whole purpose of the Farmers Creditors' Arrangement Act was to provide a new deal for the debtor, and the creditors knew right from the beginning that their interests were going to be sacrificed to a great extent at least.

Mr. REILLEY: Yes.

Hon. Mr. McGUIRE: That Act was only intended to be temporary. Why Senator Haig's province and the other western provinces want to hang on to it is their own business.

Hon. Mr. HAIG: We do not want it.

The ACTING CHAIRMAN: Your legislature asked for it back.

Hon. Mr. McGRANE: The whole object of the Farmers Creditors' Arrangement Act was entirely different from the Bankruptcy Act.

Mr. REILLEY: Entirely.

Hon. Mr. McGUIRE: I think the proposed arrangement in this bill sounds very good. The debtor must get some consideration; the creditors are not the only ones to be taken into account.

Hon. Mr. ECKER: The composition arrangement under this bill is a protection to the creditors themselves by reason of the fact that the trustee can make the same investigation as can be made under bankruptcy proceedings. I do not see why we should not give the debtor an opportunity to escape bankruptcy and so save depreciation of his assets, so long as the creditors are justly protected.

Hon. Mr. MERRILL: This is altogether in favour of the debtor.

Mr. REILLEY: I would not go that far, senator. I have had a lot of experience doing nothing but bankruptcy work for twenty-four years, and after all the majority of people are honest.

Hon. Mr. MERRILL: There is no doubt of that.

Mr. REILLEY: Many debtors may get into financial embarrassment and want to make an honorable proposal for the benefit of themselves and their creditors as well.

Hon. Mr. TAYLOR: Though the debtor may be dishonest, the trustee is supposed to be honest and he protects the creditors.

Mr. REILLEY: In section 11 I have put it this way:—

(2) Proceedings for a proposal by a debtor shall be commenced before bankruptcy as filing with a licensed trustee, and after bankruptcy by filing with the trustee of the estate,

(a) a copy of the proposal in writing embodying the terms of the proposed composition, extension or scheme of arrangement, and setting out the particulars of any securities or sureties proposed, signed by the debtor and the proposed sureties, if any;

(b) a statement, verified by affidavit, showing the cause of the debtor's financial difficulties, the reason for the proposal, and the grounds of the debtor's belief that the proposal is fair and reasonable and can be carried out.

Hon. Mr. HALL: The debtor had to do the same thing under the Farmers Creditors' Arrangement Act. The difficulty is the valuation of the assets. Under your proposal the debtor says he owns a store in the village and a farm out in the country. He has so much stock on the farm and so much goods in the store and he puts his valuation on those. The question arises right there, whether the valuation is proper. Who checks that valuation?

Mr. REILLEY: The trustee.

Hon. Mr. ECKER: Has not the trustee power to go in and examine the debtor under oath?

Hon. Mr. ASELTYNE: Only the creditors can decide whether there shall be an examination.

Mr. REILLEY: Subsection 4 of section 11 deals with the duties of the trustees:—

(4) The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the debtor as to enable him to estimate with reasonable accuracy the financial situation of the debtor and the cause of the debtor's financial difficulties or insolvency, and report the result thereof to the meeting of the creditors. A copy of the report shall as soon as completed be mailed to the Superintendent.

Hon. Mr. ASELTINE: Then if a meeting takes place 10 per cent of the creditors may require the debtor himself to be examined.

Mr. REILLEY: Or ask for a further investigation.

Hon. Mr. HAIG: What percentage of the creditors have to approve of the compromise?

Mr. REILLEY: Seventy-five per cent.

Hon. Mr. HAIG: In value and number both?

Mr. REILLEY: No. "A majority in number of all the creditors, or of any class thereof, with proven claims of \$25 or over, and holding three-quarters in amount of all such proven claims of creditors or class of creditors, as the case may be, in so far as the proposal affects any such class, present in person or by proxy, resolve to accept the proposal as made"—a majority of 75 per cent.

Hon. Mr. HAIG: In my experience I would get 75 per cent in amount because some of the bigger creditors would be only too anxious to carry on the business, and the little creditors would get squeezed to death. I would say it should be 75 per cent in amount and 75 per cent in number—both.

Mr. REILLEY: Well, this is the provision found I think in virtually every Act of Bankruptcy. I do not think you will find as high a percentage as you have suggested.

Hon. Mr. MORAUD: Number and value ought to be fair enough.

Hon. Mr. HAIG: Value does not help you much; it is the number.

Mr. REILLEY: The proposal has to be accepted by a majority of the creditors. After all, the majority rules.

Hon. Mr. ASELTINE: The bulk Sales Act of each province provides for a similar percentage in number and amount as suggested by Senator Haig. It works out very well.

Mr. REILLEY: This is a majority of all the creditors holding 75 per cent of all the claims.

Hon. Mr. MORAUD: I think it is fair enough.

Hon. Mr. HAIG: It is what gives you the trouble.

The ACTING CHAIRMAN: But you have to get a majority in number and also 75 per cent in value. That is pretty drastic.

Hon. Mr. HAIG: If you made it 75 per cent in number and 50 per cent in value this would be all right.

The ACTING CHAIRMAN: Then you might get a few of the small fellows bought off at 100 per cent. I suggest that we do not spend too much time on the details. We want to get the general picture.

Hon. Mr. HAIG: Certainly.

Hon. Mr. KINLEY: Is there anything on preferred creditors?

Mr. REILLEY: That is dealt with further on in the bill when we come to distribution.

The ACTING CHAIRMAN: This composition question is also dealt with at page 23. What are the changes in that respect?

Mr. REILLEY: In the case of a corporation, where a proposal has been before the creditors and has not been approved, the corporation can apply to the court to appoint a committee.

The ACTING CHAIRMAN: What section is that?

Mr. REILLEY: Section 23 at page 21. The Committee will investigate the affairs of the corporation, hear representations from any persons and it will then try to formulate a proposal and that proposal is submitted to the creditors or shareholders as the case may be, for their approval.

The ACTING CHAIRMAN: That committee is not necessarily composed of creditors?

Mr. REILLEY: Not necessarily. It is presumed to be an independent committee.

Hon. Mr. HAIG: Who appoints them?

Mr. REILLEY: The court.

Hon. Mr. MORAUD: Suggested by the corporation or by whom?

Mr. REILLEY: I have not said by whom. I have left it to the court to appoint a committee that it feels would be qualified to act in such a case.

The ACTING CHAIRMAN: The court, I take it, could in its discretion ask all interested parties to make suggestions?

Hon. Mr. MORAUD: The court might accept representations from the corporation?

Mr. REILLEY: I do not think the court would pay too much attention to that—I do not think a judge in Montreal would. He would be very much inclined to say: "Is this man independent in the matter?" I think that is the attitude most judges would take.

Hon. Mr. ASELTINE: Then the committee may formulate a proposal?

Mr. REILLEY: And that goes back to all the creditors again.

Hon. Mr. HAIG: And if they reject it?

Mr. REILLEY: Then the corporation can apply to the court itself to formulate a proposal. Then if the court, after hearing the report of the committee and the representations of all interested parties, is of the opinion that it is in the public interest by reason of the nature of the services rendered or the business carried on that a proposal should be formulated, it can proceed to do so and put it into effect.

Hon. Mr. MORAUD: Don't you think that procedure is rather vague?

Mr. REILLEY: There has first been a meeting of creditors to consider the proposal put forward. That is the first stage. The second stage is that they can apply to the court for a committee.

Hon. Mr. MORAUD: The corporation does.

Mr. REILLEY: The corporation. Then if that scheme fails, if nothing comes from it, they can apply to the court if it is in the public interest, because there are many corporations, as you know, which, while they are private corporations are actually operating in the public interest.

Hon. Mr. EULER: By what percentage of the creditors can the committee's report be rejected, 75 per cent?

Mr. REILLEY: The same percentage. You have a substantial majority in order to bind the rest of the creditors or shareholders, as the case may be. It is an important section. I may say, gentlemen, that I have adopted the idea largely from the corporate organization proposals of the United States Bankruptcy Act, which extended the provisions for dealing with reorganizations.

The ACTING CHAIRMAN: I think, Mr. Reilley, the most contentious part of your whole proposal is subsection 10 of section 23. You ought to go into that fully with this committee.

Mr. REILLEY: I do not know, Mr. Chairman, that there is much more that I can add to that. That is just a scheme. As I say, every person who is interested has an opportunity to come before the court and be heard. That is expressly stated.

The ACTING CHAIRMAN: Let me read the last six lines of subsection 10:—

The court may by order formulate a proposal of composition modifying or altering the rights of creditors or shareholders or any class of them

and providing for the issuance of such new securities or shares or other evidence of title or interest therein as may be necessary to carry out the terms and formalities of the proposal.

That is where the teeth are in this bill. The teeth may work both ways. That, I take it, Mr. Reilley, means that the rights of secured creditors, bondholders and debentureholders, may be affected.

Mr. REILLEY: Yes.

Hon. Mr. HAIG: That is going pretty far.

Mr. REILLEY: It is and it is not. You have to consider the fairness of the court in protecting all the interests as far as it can be equitably done.

Hon. Mr. HAIG: Let me illustrate, Mr. Reilley. Here is what happened under the Farmers Creditors' Arrangement Act, which contains a similar provision. A farmer, the owner of a half section of land, had mortgaged it to some company, he owed money to the bank and to the storekeeper, and he was in default with his municipal taxes. Now, as everybody knows, taxes are a first charge. The Judge satisfied the taxes or part of them. Then he set aside the mortgage and gave the bank and the mortgagee, who were unsecured creditors, rights in the estate. That destroyed the mortgage security. When the first mortgage on a half section worth \$5,000 is as high as \$4,000 there may be some justification for cutting that down to \$5,000, but I can never see any justification for cutting it down to \$3,000 and letting the bank and the other unsecured creditors jump in. You are doing virtually the same thing here.

Hon. Mr. MORAUD: I am very much against leaving everything to the discretion of the judge. One man can say to the bondholders: "Now, you will get only so much, and you shareholders, who should not get anything, you will divide the assets with the bondholders." I do not think we should leave that to the discretion of one man.

Mr. REILLEY: Subsection 10 of section 23 can of course be separated from the rest of the section. I admit it was put in there as a last resource. I felt that was the tendency and that there should be some final resource to get at a settlement of certain very difficult, intricate and involved matters. But, I repeat, subsection 10 is not a necessary part of the section.

Hon. Mr. ASELTIME: Is that copied from the United States Act?

Mr. REILLEY: No, it is purely a device of my own mind.

Hon. Mr. MORAUD: Don't you think the experience we have had under the Farmers Creditors' Arrangement Act has been very unsatisfactory? As you know, some of the judges ignored the Act in trying to be equitable.

Mr. REILLEY: I don't like to comment on the operation of another Act of Parliament because—

Hon. Mr. McGUIRE: The Farmers Creditors' Arrangement Act was intended to be an Act of confiscation, and that is what it was.

Hon. Mr. MORAUD: This is exactly the same thing.

Hon. Mr. McGUIRE: No. This is to make the best arrangement for both the debtor and the creditors.

Hon. Mr. MORAUD: It is confiscation of the rights of the bondholders.

Hon. Mr. McGUIRE: Confiscation is the spirit of the Farmers Creditors' Arrangement Act. That is why under it you can take an \$8,000 mortgage and cut it down to \$3,000. That was never intended in the Bankruptcy Act.

Hon. Mr. EULER: It can be done under this provision.

Hon. Mr. McGUIRE: No. What is more, can you think of any better man to rely on for the exercise of discretion than a judge with his experience and ability?

Hon. Mr. MORAUD: No; but I prefer to rely on law rather than discretion.

Hon. Mr. HAIG: I don't think Senator McGuire has had the experience of some of our western fellows with the operation of the Farmers Creditors' Arrangement Act.

Hon. Mr. MCGUIRE: No. You people out there must like it or you would not want to keep it.

Hon. Mr. HAIG: There are more debtors than creditors—

Hon. Mr. MCGUIRE: All over.

Hon. Mr. HAIG: —so it is easy to decide on the side of the debtor.

Hon. Mr. KINLEY: And the creditor is an absentee.

Hon. Mr. HAIG: Let me give an illustration. I had a second mortgage of \$1,000 on a piece of land at Marquette. The first mortgage was for the full value of the property. I lacked experience at that time or I would not have taken the second mortgage. The judge threw \$1,000 off the mortgage and said I was to get \$75 on my mortgage. So I got my \$75 at the expense of the first mortgagee.

Mr. REILLEY: You must not forget, senator, that the preamble to the Farmers Creditors' Arrangement Act was very different altogether from the preamble to the Bankruptcy Act. The object and purpose of that Act was to keep men on the farm.

Hon. Mr. MCGUIRE: Right.

Mr. REILLEY: That was the first object.

Hon. Mr. ASELTINE: Is not the object of the Bankruptcy Act to keep men in business? The same thing.

Mr. REILLEY: They went at it in a different way.

Hon. Mr. KINLEY: Is not the object to protect creditors?

Mr. REILLEY: Yes.

The ACTING CHAIRMAN: That should be the general object of the Act. I think, Mr. Reilley, we had better read the provision in this section.

—if in its opinion it is desirable and expedient in the interest of the corporation, the creditors and the shareholders or in the public interest by reason of the nature of the services rendered or the business carried on—

That widens the usual purposes of the Bankruptcy Act.

Hon. Mr. MORAUD: And discretion is left to the court. One man can decide whether it is expedient, and so on.

The ACTING CHAIRMAN: I think, Mr. Reilley, you intimated to us that you do not think subsection 10 an essential part of your scheme.

Mr. REILLEY: Oh, no.

The ACTING CHAIRMAN: It will work without that in?

Mr. REILLEY: It would work without that in if Parliament sees fit to delete that.

The ACTING CHAIRMAN: What would you think about the advisability of going a little slowly, trying the general scheme without that subsection, and if it was working well you could incorporate that a little later.

Mr. REILLEY: Well, that is an idea.

Hon. Mr. KINLEY: What is it in for?

Mr. REILLEY: My idea was to make the scheme complete.

Hon. Mr. EULER: You are really making it possible for one man, the judge, to set aside preferred rights, say, of bondholders to the advantage of other creditors: is not that so?

Mr. REILLEY: You can I suppose put it that way if you like, but I am assuming that the courts are going to deal fairly and equitably with all concerned.

Hon. Mr. EULER: But it is all left to the judgment of one man.

Mr. REILLEY: All rights depend on the judgment of one man to the last analysis.

Hon. Mr. GOUIN: You are leaving everything to the absolute discretion of the judge as to the rights of the creditors, and in the exercise of that discretion he could set aside certain civil rights.

The ACTING CHAIRMAN: Have you considered the effect this would have on future large borrowings on securities?

Mr. REILLEY: I have, and my candid opinion would be that it would not affect borrowers in any way whatsoever, because the same where this section would be applied would not be one in ten thousand.

Hon. Mr. EULER: Then why put it in?

Mr. REILLEY: As I say, I put it in to make the scheme complete.

The ACTING CHAIRMAN: I suppose you feel that if there is this ultimate power in the court it might make creditors a little more reasonable in coming to a voluntary composition—voluntary with a grain of their need?

Mr. REILLEY: It might help.

Hon. Mr. HAIG: It positively would help. There is no question about what would happen.

Mr. REILLEY: After all, you have first an investigation by a committee who have examined and investigated the situation and passed their opinion on it.

Hon. Mr. MORAUD: But the judge could go away with that opinion, take other evidence and decide that the bondholders had no claim whatever, or that they were not in a better position than ordinary shareholders.

Hon. Mr. EULER: I can well imagine, Mr. Chairman, that it might have the same effect as the Farmers Creditors' Arrangement Act had in Ontario. That Act worked to the detriment of the farmer himself, because no man would put his money in a farm mortgage if it could be partly wiped out. Who would want to buy a bond if it were in the power of a judge later on to say, "Your bond is not worth anything?"

Hon. Mr. HAIG: The only money lent on farm mortgages in Manitoba is by the Farm Loans Board. The private companies are not lending at all.

Mr. REILLEY: The Farmers Creditors' Arrangement Act is not in operation in Ontario and Quebec.

Hon. Mr. HAIG: But it scared them; they have had experience.

Hon. Mr. EULER: That is why it was wiped out here. Only Manitoba wanted the Act again. We defeated the bill by an amendment providing for the right of appeal to a judge. Next year the government came back with a similar bill embodying our amendment.

Hon. Mr. HAIG: But it is not worked the same now as it was before.

The ACTING CHAIRMAN: Let us stick to his bill, gentlemen.

Mr. REILLEY: Before I go any further, gentlemen, I want to say this. These are my suggestions. I am not married to any or all of them, and I do not care what the committee does in regard to them.

The ACTING CHAIRMAN: But you stand up to them. We want to hear your considered opinion.

Mr. REILLEY: Certainly. But I am not going to be hurt or feel badly because the committee say, "We don't think this provision is good." I want the committee to understand that so far as I am concerned.

The ACTING CHAIRMAN: On the other hand, the committee want you to give your opinion and all the reasons for it without any qualification whatever, because we have to form our opinion on that basis.

Mr. REILLEY: Is there anything more we need say about this?

The ACTING CHAIRMAN: Do you want to say anything more?

Mr. REILLEY: No.

The ACTING CHAIRMAN: What is the next question?

Mr. REILLEY: The next question discussed was decentralization.

The ACTING CHAIRMAN: We are going to leave that for a memorandum from you. (See memo. at end of proceedings.) There is nothing complicated about that. You could dictate that later. What is the next important heading?

Mr. REILLEY: In principle the next change I am suggesting is that an application for discharge of a debtor should come up automatically before the courts within a certain time after his bankruptcy.

Hon. Mr. MORAUD: Discharge of the debtor, not of the trustee?

Mr. REILLEY: Yes. In the last twenty-five years I don't suppose that 20 per cent of all those who have gone bankrupt have ever applied for their discharge. There are two reasons for that. In many cases they do not know the situation, and that is accentuated by the fact that the highest courts have held that future assets—which include earnings—may be taken possession of in order to try to pay off the creditors. The result is that in many of these cases the debtor, if he gets a job and is earning more than a bare living, is faced with this proposition, that the trustee can step in and claim through the court a certain amount of his earnings. The debtor then is never in the position of being able to apply for his discharge. While it has often been regarded as important that the creditors should obtain an equitable distribution of the debtor's assets, yet the fundamental principle of bankruptcy is that we have to give the honest unfortunate debtor an opportunity to rehabilitate himself.

Hon. Mr. HAIG: Hear, hear.

Mr. REILLEY: He cannot do that if he is perpetually in bankruptcy.

Hon. Mr. HAIG: That is right.

Mr. REILLEY: My idea is that within a certain period, six months after his bankruptcy, his application for discharge should come up before the courts.

Hon. Mr. COPP: Within a certain time?

Mr. REILLEY: Within a certain time. There are two reasons for that. The first is that the debtor and the creditors are then interested in the bankruptcy, particularly the creditors. Notices of applications for discharge are coming into my office of debtors who went bankrupt twenty years ago. Where is there a creditor to-day to receive notice of that or anything else? Under this provision the matter will be dealt with when the creditors are interested in the debtor's affairs, and they will be alive to the situation and know something about it. Otherwise if the bankruptcy goes on for a few years the creditors just write the debt off their books and count it a dead loss, and never bother about it any more. In the second place, if the application for discharge comes up early the case will be dealt with more properly on its merits. If the debtor has been unfortunate, why, the court will deal with the application on its merits, the interested creditors will be able to make representations, and if they think the debtor can do something better, or that his application should be suspended, the court will deal with it as it sees fit.

Hon. Mr. KINLEY: Are there any necessary preliminary qualifications for discharge, must the debtor pay so much of a percentage of his debts, before he goes to the court?

Mr. REILLEY: No, none at all.

Hon. Mr. KINLEY: There used to be.

Mr. REILLEY: No. The court can discharge a debtor who has not paid anything.

Hon. Mr. MORAUD: You don't make it easy for the debtor if he has to apply within six months, for the creditors will not be very keen on his getting a discharge. But a few years later the creditors—

Mr. REILLEY: Have cooled off.

Hon. Mr. MORAUD:—and then it is easier to get a discharge. If you force a debtor to apply for discharge while the creditors are still warm, there is not a chance that he will get it.

Mr. REILLEY: It is not forced on him.

Hon. Mr. LEGER: By section 146 the fact that the debtor has assigned or become bankrupt is taken as notice to the creditors that he will within six months apply for his discharge. Then there is a duty cast upon the trustee to bring the matter up before the court, unless the debtor has waived that himself.

Hon. Mr. MORAUD: It is not the obligation but an privilege of the debtor.

Hon. Mr. LEGER: Yes. I read that with a great deal of interest. The principle is very good.

Hon. Mr. HAIG: Is six months too short?

Mr. REILLEY: I do not think so. In the ordinary case six months gives the trustee a reasonable opportunity to know where he is going to finish up or how the estate is going to end up. At the same time, it is not so long that the creditors have lost interest in the matter. That was one of my reasons for this. I wanted the application for discharge to come up before the creditors had lost interest, because I know lots of discharges are going through today, though my records show that the debtors had committed fraud, just because no creditors have showed up to contest the applications.

Hon. Mr. EULER: Do creditors ever lose interest in what is going on with respect to their debtors?

Hon. Mr. COPP: Take this case, Mr. Reilley. The debtor assigned, went through the bankruptcy court, his property was all sold at public auction, the trustee carried on and paid out dividends on the assets so realized, but the debtor never got his discharge. That bankruptcy, we will say, happened fifteen years ago. Now, assuming that the debtor gets on his feet again, makes some money and accumulates an estate, can the creditors come in and demand additional dividends or does the statute of limitations apply?

Mr. REILLEY: The creditors can also come in again and repossess anything that the debtor has now got. But here is something that I consider almost ludicrous in the Act today. A case recently came before me in which a second bankruptcy occurred. The bankrupt had gone into business again and failed. It is not at all uncommon for a man to go into bankruptcy two or three times. But as the Act now stands, the creditors in the first bankruptcy are entitled to take all the assets now found before the creditors in the second bankruptcy get a cent.

Hon. Mr. COPP: Irrespective of the statute of limitations?

Mr. REILLEY: In case he never had a discharge.

Hon. Mr. COPP: I had such a case come before me and I was very much interested in what might happen.

The ACTING CHAIRMAN: That should be rectified even though there was no discharge.

Mr. REILLEY: Yes. I have a provision here for bringing it into line with the English Act dealing with a second bankruptcy, so all creditors come into the

picture. In the case I have referred to those old creditors who had washed the thing out of their books ten years ago now find themselves in the position of collecting whatever is in the hands of the trustee of the second bankruptcy.

Hon. Mr. COPP: My client came to me for advice. Now, after fifteen years, he wants to apply to be released.

Hon. Mr. HAIG: He can get his discharge.

Hon. Mr. COPP: I advised him that he had better leave sleeping dogs lie. The creditors had not said anything. Now on his application for discharge they might find he had in the meantime accumulated some means and make a further claim on him.

Mr. REILLEY: That probably might be good advice from his angle. There is nothing to prevent his creditors stepping in at any moment and taking every dollar he has got.

Hon. Mr. COPP: That is what I was afraid of.

Mr. REILLEY: He is working under that hazard all the time.

The ACTING CHAIRMAN: I think that is all we need on that point; the details we will consider later. Anything else?

Mr. REILLEY: I am suggesting that in certain respects the functions of the superintendent be broadened to be more in line with the English Act.

The ACTING CHAIRMAN: In what way?

Mr. REILLEY: Particularly in regard to the winding up of the estate. When our statute was passed there was no superintendent to act in the same capacity as the Board of Trade in England acts through the Inspector General of Bankruptcy. Consequently in our legislation the matter of dealing with discharge of the trustee was placed before the court, whereas under the British legislation it is dealt with by the Inspector General of Bankruptcy. It has to do with checking up on the statements of the trustee, and so on. I am suggesting that it should be done in that way here, that instead of going to the court for his release the trustee should come to me, and my branch would deal with it and send out notices to the creditors. Any creditor objecting would have the opportunity to apply to the court against the trustee's discharge.

One reason for my suggestion is this. In order to follow through the administration of an estate we have to check through the trustee's final statement and do everything that has to be done by the court in order to know whether the trustee has finished his job. It is only a duplication of my work for the purpose of going to the court anyway. For a long time the courts in one province always put its approval in this form: Seeing the superintendent has approved the statement, we hereby approve it. That is the way it went through. Then another change I propose will be found towards the end of the bill. It starts with section 196, and is headed Summary Administration.

Hon. Mr. LEGER: That has to do with small estates not worth the attention of the court. I have read the sections under that heading and see nothing objectionable in them.

Hon. Mr. HAIG: What is the limit?

Hon. Mr. LEGER: The limit is \$500.

Hon. Mr. HAIG: Oh, let it go.

Mr. REILLEY: Small estates would be dealt with summarily. The registrar of the court would act as the trustee and turn the limited assets over to the sherriff to realize and hand the returns back for distribution among the creditors. That would be the end of it. A great many debtors cannot find the means to go through bankruptcy because they cannot get a trustee to handle their estate. The trustee is allowed a minimum fee of \$100, as provided for in the Act fifteen years ago, and with the expenses it costs any debtor, no matter how poor a wage-

earner he may be, at least \$150. Under this scheme it ought not to cost him more than \$25.

Hon. Mr. HAIG: May I tell you, Mr. Reilley, that about 1931 the Manitoba Legislature passed a somewhat similar amendment. It enables a poor man to apply to the county court, and there his application is disposed of summarily and at small expense. I presume this is somewhat the same provision?

Mr. REILLEY: I had not heard of that.

Hon. Mr. HAIG: It is in the 1930 or 1931 statutes of that province.

The ACTING CHAIRMAN: Gentlemen, I suggest that we have pretty well covered the essentials. Mr. Reilley will always be available if we require his attendance again.

Hon. Mr. HAIG: Yes.

Mr. Reilley then withdrew.

MEMORANDUM by MR. REILLEY

The new Bankruptcy Act embodies certain reforms in principle and procedure. One of the most important changes in principle is that relating to decentralization of the Courts. Under Section 152 of the Bankruptcy Act heretofore the Superior Courts throughout the various provinces were vested with jurisdiction in bankruptcy matters. Under Section 157 it was left to the Chief Justices of each of such Courts "to appoint and assign such registrars, clerks and other officers in bankruptcy as is deemed necessary or expedient for the transaction or disposal of matters in respect of which power of jurisdiction is given by this Act and may prescribe or limit the territorial jurisdiction of any such registrar, clerk or any other officers". The powers thereby conferred have been exercised by the various Chief Justices in a very different manner. In some provinces the registrars, clerks or prothonotaries of the ordinary Civil Courts were appointed registrars in bankruptcy within their respective territorial jurisdictions. In other provinces the Chief Justice saw fit to appoint only one or a lesser number of such registrars, clerks or prothonotaries as registrars in bankruptcy with the result that all court proceedings had to be begun where the office of such registrar was located. The object of restricting such appointments obviously was to endeavour to have more uniformity in bankruptcy court proceedings.

From my observations of the operations of the Act during the last thirteen years since the office of the Superintendent of Bankruptcy was established it would appear that it is desirable that bankruptcy courts be established on a basis more convenient to the public at large and that there is now no valid reason why bankruptcy matters could not be heard and disposed of in the same manner as the business of the ordinary Civil Courts is carried on. Judicial precedents have settled many of the uncertainties and ambiguities that arose naturally on the introduction of the Bankruptcy Act in 1920 and it is believed that it would be in the best interest of the bankruptcy administration that the facilities of all the Superior Courts throughout the Country be made available in bankruptcy matters. The Criminal Code, the Winding Up Act and other federal legislation are so administered within such Courts and there is no suggestion that it should be otherwise. It would seem not to be unreasonable that bankruptcy matters be dealt with in the same way. The intended change is that the registrars, clerks or prothonotaries within their respective judicial districts should hereafter be registrars in bankruptcy for all the purposes of the Bankruptcy Act.

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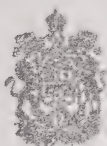
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THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, introduced:
"An Act respecting Bankruptcy,"

No. 2

TUESDAY, MAY 23, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESS:

The Honourable Mr. Justice Boyer, Superior Court of Quebec.

OTTAWA

EDMOND CLOUTIER

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	McRae
Beaubien (Montarville)	Foster	Michener
Beauregard	Gershaw	Molloy
Buchanan	Gouin	Moraud
Burchill	Haig	Murdock
Campbell	Hardy	Nicol
Copp	Hayden	Paterson
Crerar	Howard	Quinn
Daigle	Hugessen	Raymond
David	Jones	Riley
Dessureault	Kinley	Robertson
Donnelly	Lambert	Sinclair
Duff	Leger	White
DuTremblay	MacDonald (Cardigan)	Wilson—(48).

MINUTES OF PROCEEDINGS

Tuesday, 28th May, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Burtland, Burchill, Clegg, Cress, Dessureault, Euler, Fallis, Foster, Haig, Hardy, Hargreaves, Jones, Kinney, Lacombe, MacDonald (Cardigan), Marcotte, McGuire, Melinae, Melloy, Morrison, Paterson, Robertson, Wilson.—23.

In the absence of the Chairman, the Honourable Senator Hargreaves was selected Acting Chairman.

Bill A-5,—"An Act respecting Bankruptcy", was again considered.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel of the Senate.

The Official Reporters of the Senate.

Mr. W. J. Reilley, K.C., Supt. of Bankruptcy

The Honourable Mr. Justice Boyer, *Ex officio* Member of the Senate, was heard and suggested certain amendments to the Bill.

At 1.00 o'clock p.m., the Committee adjourned to the rising of the Senate this day.

At 4.15 p.m., the Committee resumed.

The hearing of Mr. Justice Boyer was continued.

At 4.35 p.m., Mr. Justice Boyer retired.

Further consideration of the Bill was postponed.

At 4.50 p.m., the Committee adjourned to the call of the Chairman.

ATTEST.

A. H. BIRDS

Chief Clerk of the Committees.



MINUTES OF EVIDENCE

THE SENATE

OTTAWA, THURSDAY, May 28, 1946

The Standing Committee on Banking and Commerce to whom was referred Bill A5, an Act respecting Bankruptcy, met this day at 11:45 a.m.

Hon. Mr. HUGESSEN (Acting Chairman) to the Chair.

The ACTING CHAIRMAN: Gentlemen, we have with us Mr. Justice Louis Boyer. If it meets with the convenience of His Lordship and members of the committee may I suggest that His Lordship give us a statement now and we can reserve our questions until we re-assemble after the hour. Does this afternoon?

Mr. JUSTICE BOYER: Gentlemen, you have me here, and I feel you want to ask me some questions. If you have any questions or special points I should be glad to be helpful in clearing them up. Otherwise I will make a few statements.

The ACTING CHAIRMAN: You will remember, Your Lordship, that we are not the expert you are, and that we are looking for guidance.

Hon. Mr. CORR: I think His Lordship would give us any suggestions he has to sections then we could study them.

Mr. JUSTICE BOYER: In the first place, I find that you are superimposing the Winding Up Act and the Companies Creditors Arrangement Act. It would necessarily abrogate the Winding Up Act and the Companies Creditors Arrangement Act. Of course the Winding Up Act could be preserved for the winding up of insolvent companies. There is a saving clause in the proposed Bankruptcy Act to the effect that permission should be had under the Winding Up Act. I do not see why there should be two acts. I am strongly in favour of the Bankruptcy Act providing only one act, and disposing of the Winding Up Act and the Companies Creditors Arrangement Act.

This act provides that a compromise may be entered before bankruptcy proceedings. It was contemplated by the Companies Creditors Arrangement Act. On that point it is just a question of disposing of the other statutes. As far as section 27 (5) of the bill is concerned it says the bankrupt should not sell any property at all; there is nothing said about exempted property. In the province of Quebec certain articles are exempted from seizure and are not to be turned over to the trustees. This section provides no exemption at all.

The ACTING CHAIRMAN: That is subsection 5 of section 27?

Mr. JUSTICE BOYER: That is right. In our province once the trustee had been discharged any creditor could take action against the bankrupt. I understand the jurisprudence of the other provinces is the other way. But it often happens that the bankrupt does not ask for his discharge, and he contracts more debts, and since those debts are not provable under the Bankruptcy Act, the new creditors are left without any remedy at all.

Hon. Mr. HAIG: We understand that.

Mr. JUSTICE BOYER: So it is up to you if you want to clarify this point.

The ACTING CHAIRMAN: Which section?

Mr. JUSTICE BOYER: Section 26. There is the question of the right of the seizing creditor. Under the proposed law the seizing creditor is only privileged after the trustee. In my experience it happens very very often that the debtor, as soon as the seizure is taken against him, makes abandonment, a trustee is appointed, and very often he never realizes enough to pay the seizing creditor.

So the seizing creditor, who has been putting the assets of the debtor into the hands of the court in order to preserve them, is practically without a right. Whether you want to let it go at that or change it is up to you.

The ACTING CHAIRMAN: What would be your suggestion there?

Mr. JUSTICE BOYER: That is section 27, subsections 1, 2, 6, compared with section 28, subsections 3 and 4. As to the discharge of the trustee, there is a provision that his report has got to be approved first by the superintendent. I entirely approve of it, but I see no disposition in the law to let anyone aggrieved by the superintendent to appeal to anyone.

Mr. REILLEY: Yes, that is correct.

Mr. JUSTICE BOYER: Section 39, subsection 5. Section 82, subsection 2.

Section 46 allows the trustee to apply to the judge for directions. I do not approve of this clause at all. But the point is this, the trustee in the first place and the lawyers run up pretty big bills, but they do not want to take responsibility, so they come back to the judge. But this direction is not binding on anyone, so the question can come up again to the judge. If it is a question of management of the estate there might be an application to the Superintendent of Bankruptcy for directions, but I do not believe these directions by the judge should be there. That is section 46.

The next point is the minimum fee to the trustee of \$100. There are a number of cases to my knowledge where no assets at all were available, so this minimum of \$100 to a trustee seems to me to be too high. That is section 90, subsection 2.

Section 93, subsection 4. This is a provision about publishing everything in the *Canada Gazette*. The costs of bankruptcy are too heavy according to the general opinion. Why saddle the estate with the cost of advertising in the *Canada Gazette*, which no one reads? Of course, if you want to preserve that as a means of emolument to the government, I suppose that is all right. But so far as I am concerned, I am certain no creditors read the *Canada Gazette*.

Hon. Mr. HAIG: Nor anybody else.

Hon. Mr. FOSTER: What would you do with it?

Mr. JUSTICE BOYER: Section 126, paragraph (d). That is for the privilege of the employees of the company. It limits the claim to \$500. To my mind it is not clear whether the \$500 applies to all employees or to anyone in particular. I think that should be made quite clear.

The ACTING CHAIRMAN: You mean the \$500 might apply to one employee only?

Mr. JUSTICE BOYER: Or to all employees. I do not know whether it means that the \$500 is for all employees or for any one in particular. That should be cleared up.

Section 160 raises the question of procedure. My idea is that the bankruptcy court should be more of a business court. That is why for my part, although I may not be more qualified than anyone else, I had a lot of difficulties at first in this regard. There was a disposition on the part of the lawyers to make the rules of procedure apply, and they would go on in the same way and carry my decision to the court of appeal. The case came before me a second time, and I gave judgment in the same way, with further reasons, and finally the court of appeal approved my judgment. I think the procedure should be made clear.

There is another feature too. Under the civil code procedure in the province of Quebec you may make any number of exceptions and contestations. You may know how the election of our mayor was contested. He was elected several years ago, he is still in office, and there is no decision yet on the exception to his election. The reason for the delay is the making of exception after exception

and the appealing on every exception. Some clever lawyers may suspend a case for two or three years.

I would suggest this amendment:—

All proceedings by or against the trustee, creditors, bankrupt, shareholders, contributors and any third party shall be summary and by way of petition.

No written contestation or stated case shall take place without the consent of the court.

All grounds of contestation shall be heard at one and the same time and disposed of by the court by one judgment, unless the court decides to hear and decide them separately.

I think that would simplify matters.

Authority of the courts. Section 164, subsections 2, subsections 6 and 7, section 167, subsections 5 and 6. The powers of the registrar to my mind are not defined at all, and I have yet to find out what his powers are. I will tell you why. One article in the old law and in this law says a judge can sit in chambers at any time on any proceeding. Another article says a registrar has jurisdiction in all matters that can be heard in chambers. As it is referred to one or the other. I think that should be clarified.

Section 171, subsection 7. I do not know whether these costs should not be wiped out. If a man wants to make an assignment a creditor can give him all the directions possible. Usually when an assignment is made the blank is generally filled up by the trustee to be appointed, and he is the one who puts down the name of the lawyer who gets the fees. I do not think the fees on the assignment should be allowed.

The ACTING CHAIRMAN: Which section?

Mr. JUSTICE BOYER: Section 171, 7(c).

The ACTING CHAIRMAN: Costs of assignment?

Mr. JUSTICE BOYER: Yes. There are several grounds of appeal, and finally there is a disposition. An appeal may be taken with the permission either of a judge of the Superior Court or a judge of the Court of Appeal. Personally, I do not like the idea of having to sit on my own judgment and decide whether the party should go to appeal or not. I think it would be safer to leave it to the court of appeal, which would have a clear mind about the matter.

The security on appeal is fixed at \$100. There may be an appeal involving thousands of dollars, even millions, and the guarantee of costs would be only \$100. It is true there is a disposition on the part of the Court of Appeal to increase the security, but I think this minimum should be increased.

Hon. Mr. HAIG: It should be under your suggestion that all questions should be settled in one appeal.

Mr. JUSTICE BOYER: That cannot always be the case.

Hon. Mr. HAIG: No.

Mr. JUSTICE BOYER: But on any appeal any creditor dissatisfied can appeal, and all he has to do is to put up \$100. Then the matter may stand over for three or four months, and if the long vacation intervenes the delay may extend over six or eight months.

I think a difference should be made clearly between fees on court proceedings and fees for assistance of the trustees. There is a limit in the law as to the costs, but it is not clear which costs. It is all right to limit them, but on the other hand there are cases like the Stadacona Mines Company, where there have been any number of petitions contesting certain claims and notes, each of them involving amounts from \$10,000 to \$20,000. Naturally no lawyer would carry on the contestation if there is a limit of 10 per cent of the assets of the

corporation, as finally the assets may not even be \$10,000. As to the fees for instructions to the trustee, I am perfectly in accord with the limit put down, because I find the fees are generally exaggerated.

As to the disbursements, the fees to be paid on procedure, I do not like the provision as it stands, for this reason: there is no distinction made according to the amount involved in the bankruptcy. On a petition in bankruptcy the fee is the same whether the assets are nil or amount to \$1,000,000. The costs going to the Crown, the registrar and to the lawyer are not classified at all. I think that should be remedied.

I may say that I have not had time to consider the bill very closely, especially not to compare it with the Act, but so far what I have stated have struck me as the points that should be brought to your attention. If there are any other points you would like me to clear up I shall be glad to do so.

Hon. Mr. KINLEY: Would you care to discuss section 143, on page 91 of the bill?

Mr. JUSTICE BOYER: What about it, sir?

Hon. Mr. KINLEY: I am not a lawyer, but I have been reading the discussions in the House of Commons about the liberty of the subject under Magna Carta, and I should like to quote the report at page 1376 of the Commons Hansard.

Mr. JUSTICE BOYER: There is no change there, you know.

Hon. Mr. KINLEY: I know. I just want to show what the Minister of Justice said on this thing, when answering critics who had criticized the espionage law. Let me read the report:

Mr. ST. LAURENT: Then entering another field let us look at the Bankruptcy Act. Sections 127 to 138 provide that if a man becomes bankrupt and his creditors are disappointed at his allowing something to happen that was not intended to happen he can be examined under oath and asked to explain how and why some of his creditors are to be exposed to the loss of some dollars. Section 138 of the Bankruptcy Act provides:

Any person liable to be examined under the provisions of the ten last preceding sections shall be bound to answer all questions relating to the business or property of the debtor, and as to the causes of his insolvency and the disposition of his assets, and shall not be excused from answering any question on the ground that the answer may tend to criminate the person so examined.

Mr. SMITH (Calgary West): What statute is that?

Mr. ST. LAURENT: The Bankruptcy Act, section 138.

Mr. DIEFENBAKER: Is not the person who is being examined there entitled to the protection of the Canada Evidence Act?

Mr. ST. LAURENT: Apparently not.

Mr. DIEFENBAKER: Against the use of the evidence?

Mr. ST. LAURENT: I am not stating it as my opinion that he would not be treated in the same way, but Parliament went to the length of saying that he would not be excused from answering questions about the reasons for his insolvency because he might thereby incriminate himself.

Mr. FLEMING: Will the Minister not tell the committee that these examinations are carried on before a court officer and that the bankrupt always has the benefit of counsel.

Mr. ST. LAURENT: If it is a benefit, I assume counsel may be present. But the position is that the debtor is called upon to explain why it is this situation of his which was not supposed to happen and which his creditor did not expect to happen, and which may cause his creditors to lose someone or more dollars did come about. It is not only the Canadian

Parliament that has made this provision because the Bankruptcy Act of 1914, chapter 59 of the statutes of the Parliament of the United Kingdom of that year, provides in section 15 for a similar situation there. Now, section 143 of this bill says:—

Any person being examined hereunder shall be bound to answer all questions relating to the business or property of the bankrupt, and as to the causes of his insolvency and the disposition of his assets, and shall not be excused from answering any question on the ground that the answer may tend to criminate the person so examined or to establish his liability in any civil action, and all or any of the questions and answers upon any examination under this Act may be given in evidence against the person so examined on any charge of an offence under this Act and in any civil action or proceeding brought by or on behalf of, the trustee or of any creditor or creditors entitled to take such action or proceedings.

This comes to my mind, Mr. Chairman, because of my business experience and also my experience in parliamentary life. Take the Compensation Act and other legislation, those who are to administer it want some kind of blanket control that restricts the liberty of the subject. The principle seems to be that you are presumed to be guilty until you have proved your innocence—something entirely contrary to our traditions. We were talking about the Mounted Police this morning. I have the greatest respect for the Mounted Police, but in my experience what those men would do in remote sections of the country, in the days of rum-running, hardly looked like justice. What is the use of talking about the liberty of the subject and the Magna Carta if we require a man to incriminate himself?

Hon. Mr. HAIG: This has got nothing to do with liberty of the subject.

Hon. Mr. KINLEY: Under this law a man is called upon to give evidence to incriminate himself.

Hon. Mr. HAIG: Why not, if a man has been carrying on a crooked business? Suppose I am a merchant and have stolen goods and turn them over to somebody. The trustee gets after me, and when he has me under examination, he asks, "What did you do with those assets?" I must admit what I did with them. The person who does a crooked thing like that is the only one who can tell about it.

Hon. Mr. KINLEY: Anyone who is brought into court on a charge may be proved guilty by the evidence, but you cannot make a man prove himself guilty.

Hon. Mr. HAIG: Under the bankruptcy law of any country there is no way to get the kind of evidence I am referring to except out of the man himself. That has always been the law.

Mr. JUSTICE BOYER: Yes.

Hon. Mr. KINLEY: In Great Britain and other countries where financial interests were strong the law was always very arbitrary. To make a man prove himself guilty is contrary to the principles of justice. Even if a man is a murderer you have got to prove him guilty, but under this law, which deals with a money matter, he is required to prove himself guilty.

Hon. Mr. HAIG: It seems to me we are discussing a question of policy now, and I do not think his Lordship would care to comment upon that.

The CHAIRMAN: I suggest, Senator Kinley, that this is a matter of public policy, and we can hardly ask his Lordship to deal with that.

Hon. Mr. KINLEY: He is an expert witness, and I wanted him to give us the benefit of his knowledge on this feature of the law.

Mr. JUSTICE BOYER: It is the old law. I did not consider it especially, but I find it is very good law. It is very hard to get the truth out of a

bankrupt sometimes, and but for the provision that he cannot claim any privilege you would never get at the facts. If the debtor is honest he will answer all right, and if he is a crook I do not think he deserves any mercy.

Hon. Mr. KINLEY: He is not a crook till he is proved to be one. This law seeks to get the proof out of his own mouth.

Mr. JUSTICE BOYER: That may be, but there may be a *prima facie* case against him.

There is another matter. I understand that subsection 10 of section 23 has been a subject of some discussion. That subsection allows the judge, when the parties cannot agree on a compromise, to impose one on the parties. That is a pretty radical departure from the old law. There is one suggestion I would make, namely, that if you allow that subsection to stand it should be restricted to public utility companies. In that case the public is interested. On the other hand, if the public has rights, it must also have some obligations, and if you cut down the rights of creditors and shareholders there might be a question of payment of the rates to be paid by the public.

I believe that decentralization is another point that came up.

Hon. Mr. HAIG: Yes.

Mr. JUSTICE BOYER: So far in Quebec only two registers have been appointed, one in Quebec and one in Montreal. Decentralization might entail considerable delay. A judge sits in the rural districts only three or four times a year.

Hon. Mr. HAIG: It is the same in Manitoba.

Mr. JUSTICE BOYER: Again, in the act there is a provision for appointing a judge especially to handle bankruptcy matters. Well, if one judge is appointed especially to handle bankruptcy matters he cannot be attending to them all around the province, especially in the province of Quebec, where we are short of judges already. In commercial matters, at least, if the debtor is from Montreal, practically all the creditors will be in Montreal, with perhaps a few in the rural districts. And if the debtor is in Quebec, you will find practically all the creditors there. So as the matter stands now, it is satisfactory.

Hon. Mr. HAIG: Mr. Chairman, I would suggest that the committee adjourn.

The committee adjourned at 1 p.m., to resume when the Senate rises.

The committee resumed at 4 p.m.

Hon. Mr. HUGESSEN, Acting Chairman.

The ACTING CHAIRMAN: Does the committee wish to continue asking questions of Mr. Justice Boyer?

Hon. Mr. KINLEY: Perhaps Mr. Justice Boyer could tell us how the Companies' Creditors Arrangement Act and the Bankruptcy Act are related.

The ACTING CHAIRMAN: I was going to ask his Lordship to give us his views on whether it is a good thing to abolish the Companies' Creditors Arrangement Act and the Winding-up Act in so far as it relates to insolvent companies, and to have the provisions in regard to bankruptcy placed in one statute. That is really the effect of this legislation.

Mr. JUSTICE BOYER: I see no objection to having the provisions incorporated in one statute. Originally when the Bankruptcy Act was first passed you could make a compromise without going through bankruptcy, but that provision was abolished later on. It is of course for you to say, but I would suggest that the Winding-up Act remain as a law for winding up companies that are not insolvent and which come within the jurisdiction of the federal parliament, that is, companies incorporated by federal statutes and doing business in more than one province.

I want to correct a statement I made this morning, Mr. Chairman. I said there should be an appeal from any decision of the Superintendent of

Bankruptcy. After reading more of the bill I find there is provision for an appeal, in section 91, subsection 8.

One thing I forgot is the provision that the trustee may carry on the business of the bankrupt. That is section 47, subsection 1, paragraph (b). I find the provision is somewhat abused, and I would suggest that a limited period be stated for the carrying on of business by a trustee, except by leave of the court.

Hon. Mr. FOSTER: Then he could apply for an extension?

Mr. JUSTICE BOYER: Yes.

Hon. Mr. FOSTER: And give his reasons?

Mr. JUSTICE BOYER: Yes. I will give you an example. A company in Montreal has been under the Bankruptcy Act for eight, if not ten, years. The trustees have been carrying on the business all that time, and not only the business of that company, but they went into the manufacturing of hardwood flooring, they opened a coal and wood yard and so on; and during that time there has never been a dividend paid.

Hon. Mr. FOSTER: Whom are they working for?

Mr. JUSTICE BOYER: Creditors who are supplying materials are often appointed as inspectors and they want to keep the business going. The trustees can always get credit from the bank, and the creditors have no objection to the business being carried on, because they know they are secure. The assets may not be sufficient to pay the debts in full, but they are sufficient to pay for whatever is sold by the inspectors.

Hon. Mr. EULER: The Abitibi Company was in the receiver's hands for two years.

The Deputy CHAIRMAN: Longer than that, I think.

Mr. JUSTICE BOYER: Section 123 deals with restricted creditors. Nowadays a large number of commercial ventures are made in the guise of companies; that is, one man incorporates a company and he is really the sole owner. There have to be three persons interested in a company before a charter can be obtained, but the real owner gets a couple of members of his family or employees to join him. If the company is running into difficulty, the man who has the main interest advances money to the concern, which is practically his own, and when there is a bankruptcy you find he is the largest creditor.

When there is a bankruptcy you find he is the largest creditor. I think his claim should be restricted and put in the same class as the others. There may be a question of deciding what is the actual situation. It is not always a one-man company, but it may be controlled by one man with more than two or three shares.

Hon. Mr. HAIG: A family corporation.

Mr. JUSTICE BOYER: Yes. It might be wanted to mention relatives, employees and others associated with the principal shareholders.

Hon. Mr. KINLEY: Who can be preferred creditors under the Bankruptcy Act?

Mr. JUSTICE BOYER: There is a list of them. I am glad to say that has been clarified in the bill. Formerly there was a lot of litigation as to what the purpose could be between federal and provincial governments, municipalities, and so on. Now the law provides clearly for the whole thing.

Hon. Mr. KINLEY: How about the banks?

Mr. JUSTICE BOYER: They stand like everyone else.

Hon. Mr. KINLEY: They are usually preferred.

Mr. JUSTICE BOYER: The banks have their liens under the Bank Act. But so far as their lien is concerned, they are in the same position as the other parties.

if they knew the bankrupt was insolvent at the time they took the lien. I have had a number of transactions where banks were concerned.

Hon. Mr. KINLEY: I am just asking for information. Let us suppose we are the creditors of the concern in bankruptcy, and you four gentlemen up there have big preferred claims and want to carry on the business, and the rest of us have smaller claims which are not preferred. What voting power have they? Do they vote by the size of their accounts, and thus control the situation?

The ASSISTANT CHAIRMAN: Which Act are you referring to, senator?

Hon. Mr. KINLEY: I am referring to either the Bankruptcy Act or the Creditors' Arrangement Act. Suppose we are all creditors here trying to decide what is best to be done. The four up there have all preferred claims, big claims, and the rest of us have unpreferred claims. We might want to wind up the business, and they might want to carry it on. What power have they over us?

Mr. JUSTICE BOYER: As far as the voting is concerned, the preference creditors are generally what you call secured creditors, and as secured creditors they can vote. Suppose one man is a creditor for \$10,000, and he estimates his security at \$5,000. Then he is a creditor for \$5,000 and he can vote accordingly.

The ACTING CHAIRMAN: Is the voting according to the amount of the claims or the number of the creditors?

Mr. JUSTICE BOYER: I forget now.

Hon. Mr. HAIG: As the claims increase you do not get as many voting as for the smaller creditors. For instance, if I have a claim for \$1,000 and you have one for \$5,000, you have not five times as many votes as I have; you probably have three times as many.

Mr. REILLEY: You would have three votes, he would have about six.

Hon. Mr. KINLEY: That is the safeguard there.

Hon. Mr. HAIG: Yes. There is another position which I think the judge would know of.

The ACTING CHAIRMAN: Preferred creditors.

Hon. Mr. HAIG: Yes. Not only can a preferred creditor value his securities as the judge said, but he can add 10 per cent to his security and if the trustee takes over the claim he must take it over at that value.

Mr. REILLEY: I do not think so.

Hon. Mr. HAIG: He cannot take over my claim without paying me the extra value.

Mr. REILLEY: No. I do not think that has ever been in the Act in that way. No creditor who files a claim as a secured creditor can do that. You can offer him his dollars, and he has got to take them.

Hon. Mr. HAIG: No.

Hon. Mr. FOSTER: You said there was a provision in this bill that the bankrupt can put a proposition before his creditors before making an assignment.

Mr. JUSTICE BOYER: Yes.

Hon. Mr. FOSTER: Under the Act he cannot do that.

Mr. JUSTICE BOYER: He had to go into insolvency, which meant a lot of costs before making an assignment.

Hon. Mr. FOSTER: This gives him a better chance.

Mr. JUSTICE BOYER: Yes.

The ACTING CHAIRMAN: You favour that amendment?

Mr. JUSTICE BOYER: Yes, I do.

The ACTING CHAIRMAN: You don't think it is open to abuse as it was apparently in old days?

MR. JUSTICE BOYER: There are provisions in the bill which might prevent fraud. Of course you cannot always prevent it.

HON. MR. FOSTER: Is there any provision in this bill with regard to the residence of the trustee?

HON. MR. HAIG: You had better ask Mr. Reilley that question.

HON. MR. FOSTER: In our province this has been our experience. A man in business in New Brunswick would assign to a man in Montreal. There would be quite a number of creditors in Montreal and they would come down and a non-resident man would be appointed trustee. So you had a man in Montreal in control of a business in New Brunswick. This absentee management of the bankruptcy is not always in the best interests of the creditors generally. Is that provided for in the bill?

MR. REILLEY: There has not been any change in that regard; but the system of licensing has done away with almost all of that trouble. I have only known of one or two cases of that nature in the last ten years, because a trustee has to get a licence from each province.

HON. MR. FOSTER: I know.

MR. REILLEY: A trustee in Quebec can get a licence in Ontario if he pays the extra fees.

HON. MR. FOSTER: That absentee management was prevalent at one time.

MR. REILLEY: Yes, I know.

MR. JUSTICE BOYER: If the creditors find it to their interests to appoint a non-resident trustee they will do so.

HON. MR. KINLEY: Could not the court appoint the trustee?

HON. MR. HAIG: No.

HON. MR. KINLEY: The big creditors appoint the trustee.

HON. MR. HAIG: No. They only appoint the trustee because they have the biggest interest and think they can run the business to the best advantage through that trustee. I have had a lot of experience in bankruptcy work in Manitoba. They always pick out the three largest creditors to be inspectors. They do so because they have the largest interest—I am not talking of the unsecured creditors—and by and large they generally run the business to the best advantage. If you had it any other way you would have all the little fellows forcing the larger creditors to buy them out. Abitibi is a good illustration of what can be done in this way. Abitibi was managed in this way for ten or twelve years, and at last it swung out and is now doing well; whereas had the company been cleaned up at that time every little fellow would have lost every dollar, and so would the large fellow too. I think the present table of voting gives a pretty fair bill.

THE ACTING CHAIRMAN: Are there any other questions to be asked His Lordship?

HON. MR. KINLEY: It is the general impression that bankruptcy is awfully wasteful and the expenses are too heavy.

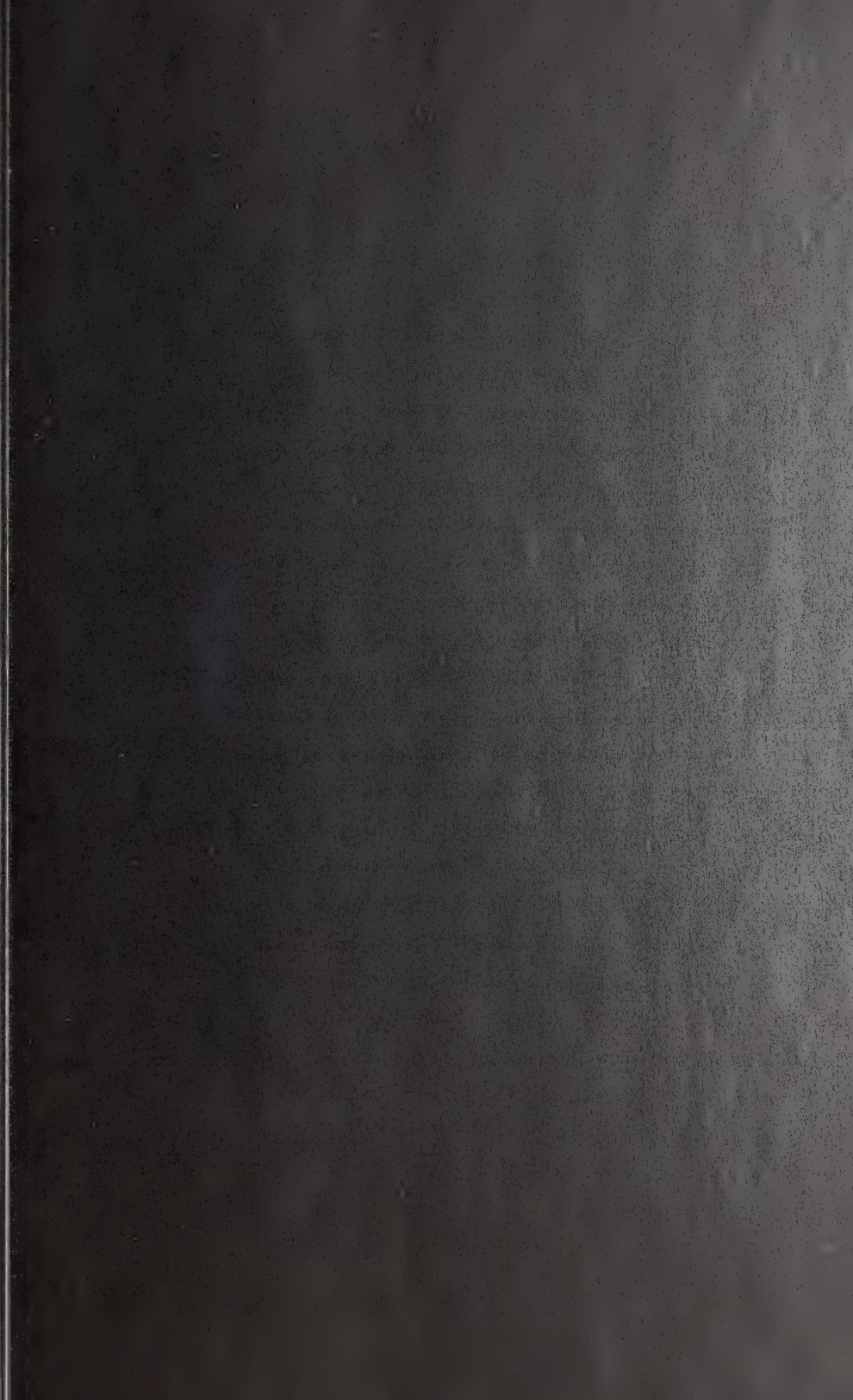
MR. JUSTICE BOYER: I agree with you. I think the government fees, the trustees' fees and the lawyers' fees are always too high. The government takes advantage of it. I will give you an illustration. On a petition in bankruptcy the government exacts \$4.50, and everything is done by petition. That means in any bankruptcy there may be quite a number of petitions. Originally the fees all went to the registrar, and he made heaps of money. There is a disposition in Quebec that the lawyers interested should meet to draft the notes of judgment and to engross them. In our province there is no such disposition. The judge gives his reasons for judgment when he rises, and if judgment is given from the bench it is drafted by one of the court employees without any

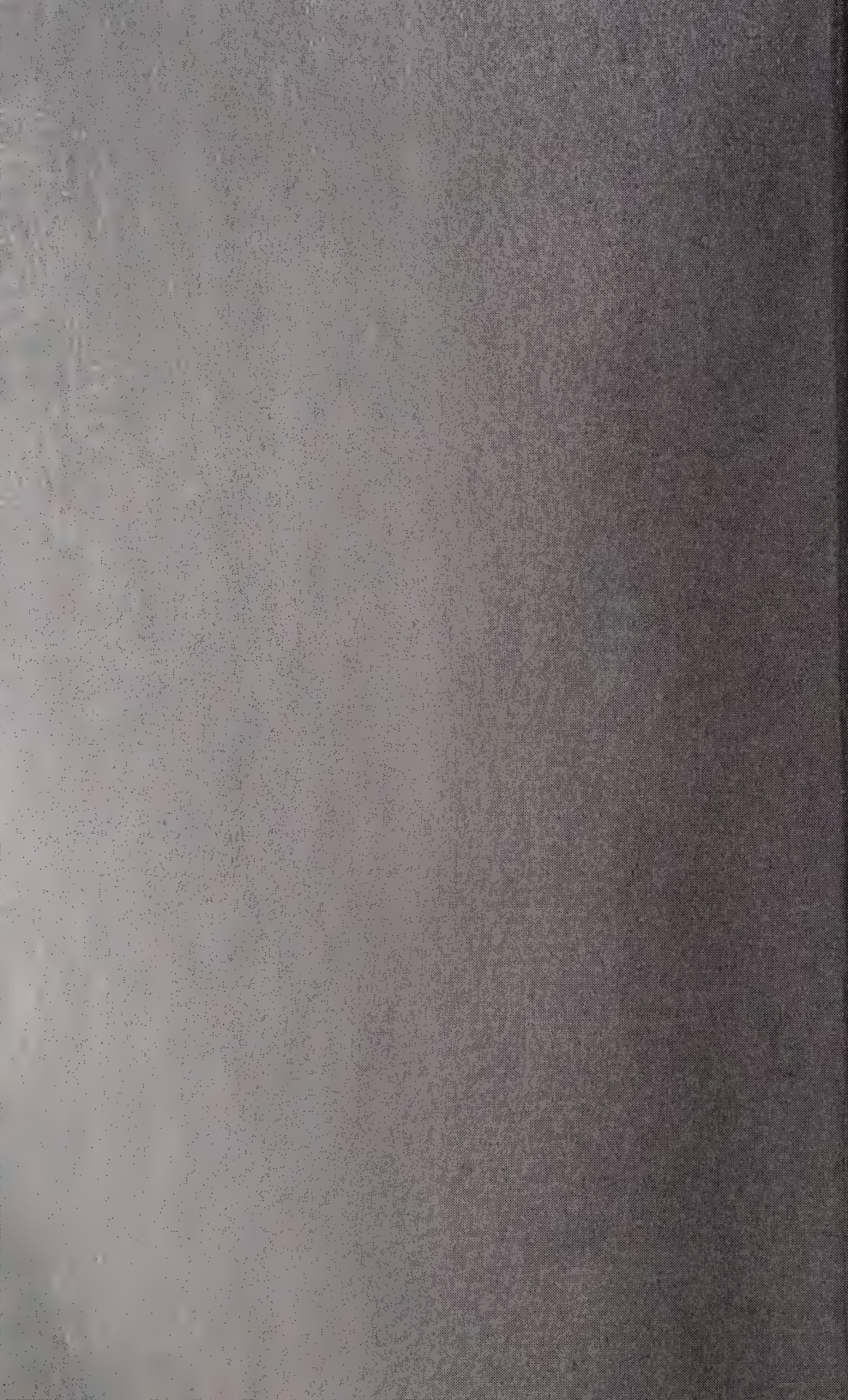
special charge. Previously the judge would simply put on the petition "petition granted" and the registrar would draw a form of judgment. He considered that he was instrumental in drafting the judgment or in having it drafted by some underling, and was entitled to a fee for settling and drafting the judgment, so he charged \$4.50. When the law was changed to give the money not to the registrar but to the provincial government, they were very careful to carry on the same practice.

Hon. Mr. HAIG: I think I speak for all the members of the committee when I say that we are grateful to Mr. Justice Boyer for meeting with us to-day.

The ACTING CHAIRMAN: Thank you very much, My Lord.

The committee adjourned.



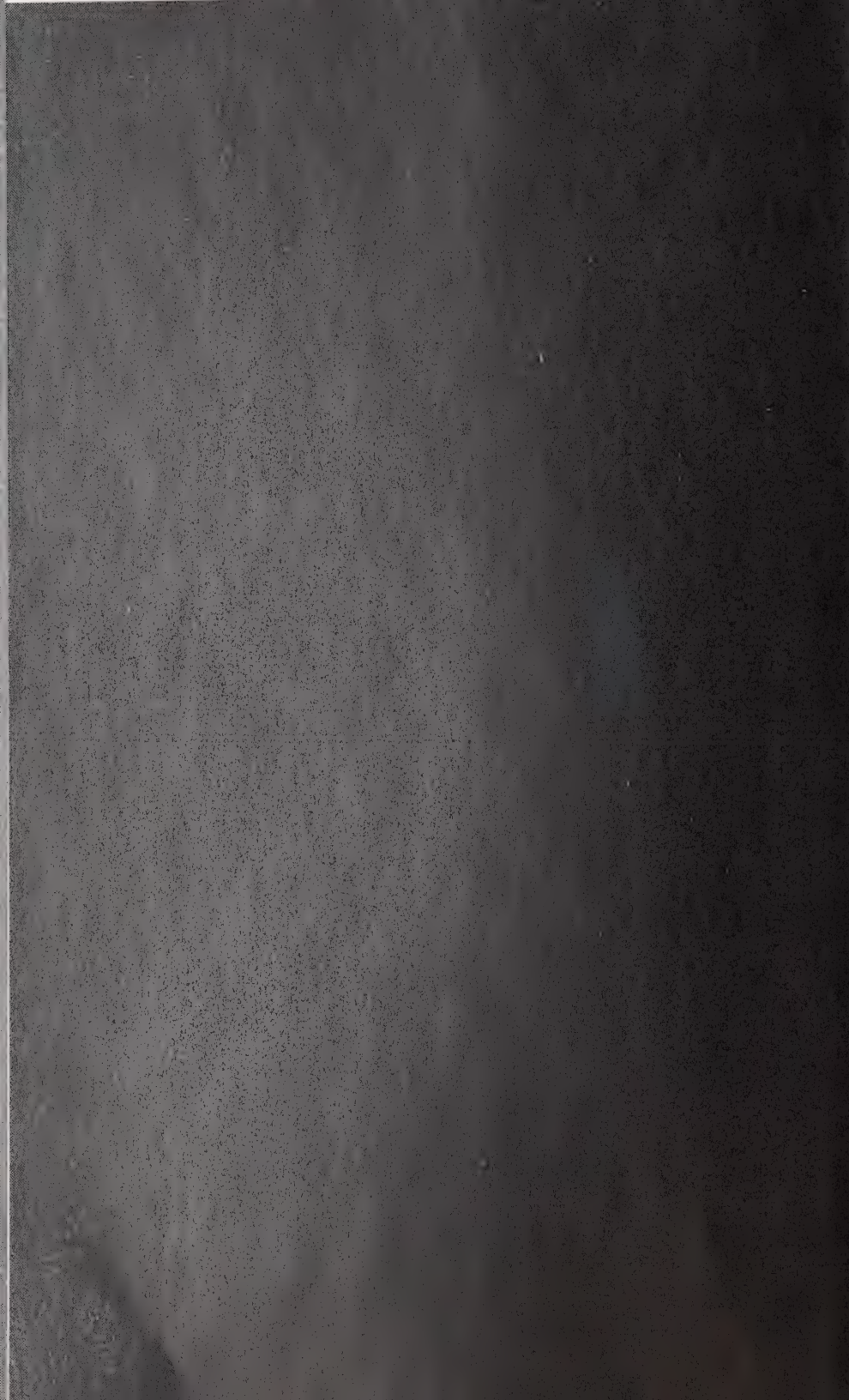


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THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 3

THURSDAY, JUNE 20, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

The Honourable Mr. Justice Urquhart, Supreme Court of Ontario.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy

Mr. Terence Sheard, representing The Dominion Mortgage and Investments Association.

OTTAWA

EDMOND CLOUTIER

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	McRae
Beaubien (Montarville)	Foster	Michener
Beauregard	Gershaw	Molloy
Buchanan	Gouin	Moraud
Burchill	Haig	Murdock
Campbell	Hardy	Nicol
Copp	Hayden	Paterson
Crerar	Howard	Quinn
Daigle	Hugessen	Raymond
David	Jones	Riley
Dossureault	Kinley	Robertson
Donnelly	Lambert	Sinclair
Duff	Leger	White
DuTremblay	MacDonald (Cardigan)	Wilson—(48).

MINUTES OF PROCEEDINGS

Thursday, 20th June, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senator Beaugard, Chairman; The Honourable Senators Aseltine, Ballantyne, Burchill, Dessureault, Donnelly, Duff, Euler, Guin, Hayden, Howard, Jones, Kinley, Lambert, Leger, McGuire, Molloy, Oraud, Paterson, Robertson, Sinclair and White—22.

Bill A-5, "An Act respecting Bankruptcy," was again considered.

In attendance:

The official reporters of the Senate.

Mr. W. J. Reilley, K.C., Supt. of Bankruptcy.

The Honourable Mr. Justice Urquhart, Supreme Court of Ontario, Toronto, Ontario, was heard and submitted a memorandum on several phases of the legislation proposed by the Bill.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy, was heard with respect to the number of failures in Canada during 1945.

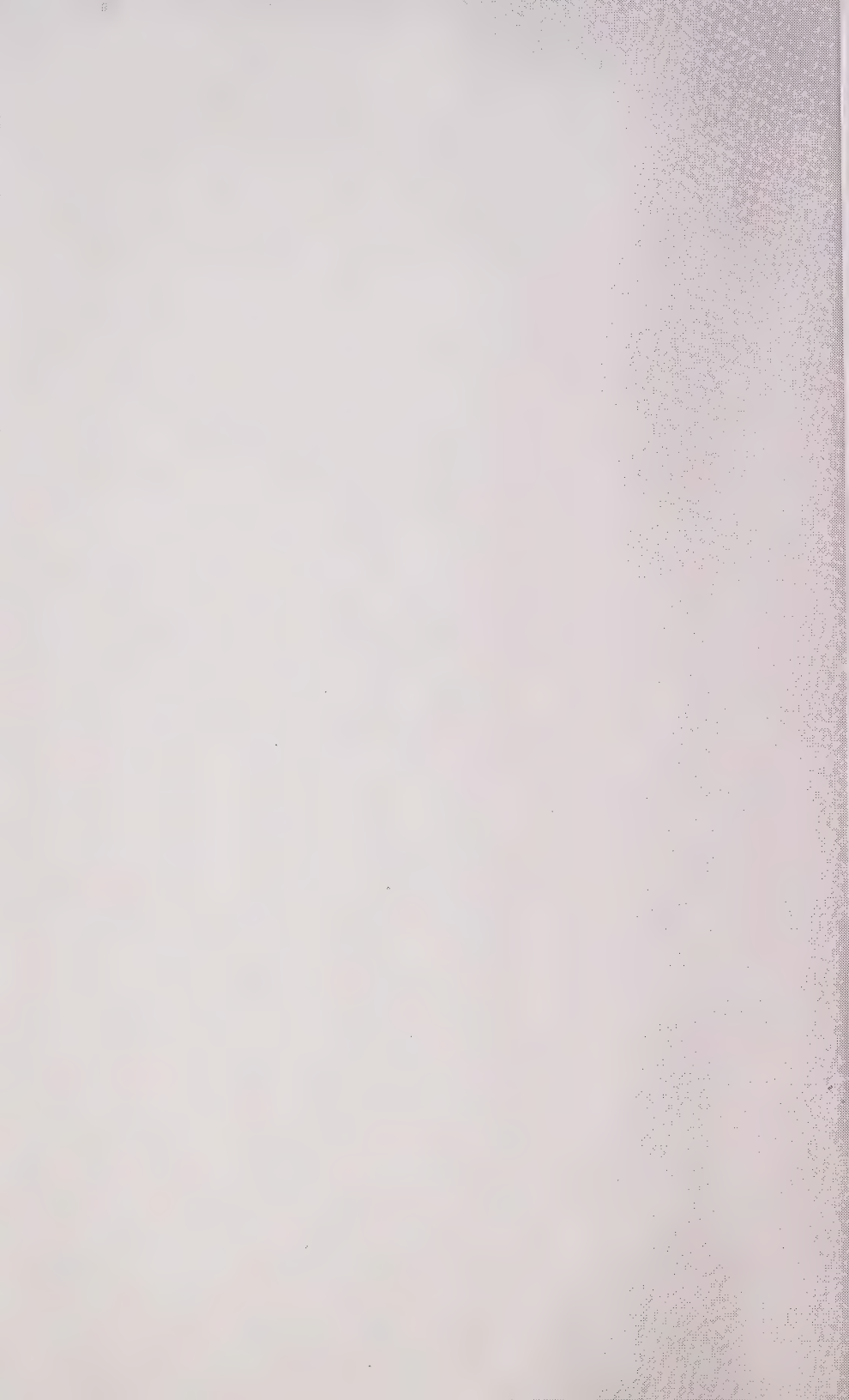
Mr. Terence Sheard, Assistant General Manager, National Trust Company, was heard and submitted a brief on behalf of The Dominion Mortgage and Investments Association.

At 12.20 p.m., further consideration of the Bill was postponed.

The Committee then adjourned to Wednesday, 26th June, instant, at 3.30 a.m.

Attest.

R. Larose,
Clerk of the Committee.



MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Thursday, June 20, 1946.

The Standing Committee on Banking and Commerce, to whom was referred Bill A-5, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the Chair.

The CHAIRMAN: Gentlemen, the Honourable Mr. Justice Urquhart, of the Supreme Court of Ontario, has been good enough to come here to give us the benefit of his experience with and study of the Bankruptcy Act, the proposed amendments to which, in Bill A5, have been referred to this committee.

Hon. Mr. JUSTICE GEORGE A. URQUHART, of the Supreme Court of Ontario: Honourable senators, I come here to-day to speak, not on the whole Act but on several phases of it which interest me as a Bankruptcy Judge and to which I think I may say generally that I take exception. I appreciate that as a revision of the Statutes of Canada is due in about 1947, the consolidation of acts is a good thing. Yet, speaking generally, it seems to me that the Bankruptcy Act in its present form is one that, with a few minor exceptions, needs little change. I say that because in the various provinces, after an administration of nearly thirty years, a very considerable body of law has been built up, and the course of the law has been pretty well charted by the efforts of the great Judges who have gone before which make the work of present Judges in Bankruptcy, like myself, comparatively easy. Our Bankruptcy Act, as you all know, is to a large extent based on the Bankruptcy Act of England; and in that country too there has been built up a considerable body of law, which is of great interest to us and to which we look for guidance. So I look rather askance at the somewhat drastic changes that have been proposed in this bill.

I have prepared a memorandum which I would be happy to file if that meets with your approval. (See Appendix A.) But there are three phases of the bill that I wanted particularly to discuss with you. I will begin with the third, because it is the one of the greatest interest to the High Court in Ontario and to me as the present Bankruptcy Judge of that Court. I have been sole Bankruptcy Judge of the province now for about eight and a half years. I refer to the putting of twenty-one bankruptcy offences mentioned in section 200 into the exclusive jurisdiction of the High Court, I presume without a jury. It will be noted that section 149 (1) (f) which is one of the new clauses, gives the court lenary power and jurisdiction:—

to arraign, admit to bail, try and punish offenders for offences committed under this act.

The bill does not say that this is to be done without a jury, but I would assume the intention of the draftsman was that a Judge of the highest trial court shall try without a jury persons charged with what I should think are comparatively minor offences, for which the penalty is not more than two years. All of these are indictable offences.

Hon. Mr. HAYDEN: May I ask a question here?

The CHAIRMAN: Yes.

Hon. Mr. HAYDEN: I notice subsection (3) of section 159 provides for appeals to the Supreme Court of Canada. I take it that means appeals—

Mr. Justice URQUHART: From the Court of Appeal, I should think.

Hon. Mr. HAYDEN: In these criminal matters?

Mr. Justice URQUHART: I do not know what that means, to tell the truth.

Hon. Mr. HAYDEN: And then there is a question whether the appeal is to be subject to the ordinary provisions of the Criminal Code with reference to criminal appeals.

Mr. Justice URQUHART: I do not know. It is not made clear.

If you look at the notes to section 159, you will see it is stated that the object of the supplementary jurisdiction conferred under this section is to have matters or disputes disposed of by the court exercising bankruptcy jurisdiction. Then the notes go on to say:—

The most unsatisfactory phase of bankruptcy administration relates to the punishment for offences enumerated in the act. Experience indicates that in so many cases magistrates and judges of inferior courts do not fully appreciate the significance of the offences as related to commercial morality with the result that creditors at large are almost thoroughly discouraged by reason of the failure to obtain proper and sufficient penalties for offences committed.

Hon. Mr. HAYDEN: Have you found in your experience that bankruptcy offences vary very much in the type of fraud involved as compared with ordinary criminal fraud?

Mr. Justice URQUHART: I do not think so on the whole.

You will notice that twenty-one offences are set out in section 200. For instance, these offences include the bankrupt not discovering to the trustee all his property, or not delivering up to the trustee all real and personal property in his custody or under his control or not delivering up to the trustee all books, documents, papers and writings in his custody, etc. These are all smaller offences than those of fraud in the Criminal Code.

In the opinion I am about to express I have the concurrence of Chief Justice McRuer of our court, who took a great interest in this matter and collaborated with me in preparing the memorandum on this particular point. This proposed legislation we think is not only objectionable in form, as I have indicated in my memorandum, but it would be most difficult to work out. As I have said, section 200 creates twenty-one indictable offences. I have not compared them with the offences set forth in the Act, but I think they are very similar.

It is to be noted that they are indictable offences, and that the Criminal Code provides procedure for trial of such offences. The Supreme Court of Ontario now has jurisdiction to try indictable offences.

Hon. Mr. LEGER: There is nothing new in section 200.

Hon. Justice URQUHART: No. I am not objecting in the least to section 200. What I am objecting to is that what may be considered comparative minor offences, and well within the jurisdiction of magistrates and county judges, should be placed under the jurisdiction of the Supreme Court. In a minute or two I will come to another reason that in my view lends added strength to this objection.

The Court of General Sessions has power to try all indictable offences, except those mentioned in section 583 of the Criminal Code; these must be tried before a judge and jury of the High Court, and include such grave offences as treason, murder, manslaughter, rape, and a few others. In all cases except a special case, which, if I remember rightly, is provided for by section 598 of the Code, the accused has the right to elect whether he will be tried by a magistrate

or by a judge and jury at the general sessions. Should it happen, however, that a man accused of an indictable offence in awaiting trial in the county jail, and a Judge of the Supreme Court is sitting in the county with a jury, he would have to try the accused, even though the offence might be comparatively insignificant. There is no objection to the Supreme Court dealing with the case in those circumstances.

The Supreme Court now has jurisdiction to try these offences only if the Attorney General of the province considers that they are important enough to direct the indictment to be laid and the trial to be by jury.

Is it intended by this section that a man charged with what in the scale of offences is a comparatively minor offence shall be tried without a jury against his will? It is suggested in the notes to the section that offenders would be tried by a judge of the highest trial court, and that thus they would not be deprived of their rights under the ordinary criminal procedure. While that is quite flattering to the judges, it might equally be said that murder, manslaughter or any other grave offence could be tried by such a judge and that would be all right; but the accused would be deprived of his right to be tried by a jury. The only cases in the Criminal Code which are tried without a jury are those dealing with trade conspiracies, section 598.

Hon. Mr. LEGER: Does the section impose an obligation on the bankruptcy judge to hear and interpret offences?

Mr. Justice URQUHART: Not as I read the section.

The purpose of this section appears to be that we should try those offences and the offenders would be deprived of their right to be tried by a jury. If, for instance, a man is accused of armed robbery, he has the right to be tried by a jury. He can be sentenced by a magistrate or judge of the county court, as the case may be, to imprisonment for life and whipping. There are numerous other offences for which life imprisonment can be imposed by county judges, and even by magistrates. Yet by this bill that jurisdiction would be taken away from them and transferred to the highest court in the case of offences not involving a penalty of more than two years.

There is another difficulty. The thirteen judges of the Supreme Court of Ontario have to cover forty-eight counties, and they sit at specified times throughout the province. As I have said, unless we find a man in jail there is no compulsory jurisdiction for us to act except in certain unusual cases. I can see no reason why the magistrates and county judges should not continue to try offenders charged with these indictable offences. If the Attorney-General considers any case of such importance as to warrant it he can order it to be tried before a judge of the Supreme Court.

Hon. Mr. ASELTIME: Has there been any dissatisfaction with the present practice?

Mr. Justice URQUHART: I am coming to that. One of the reasons for the proposed change is that creditors seem to think (a) they do not get a sufficient number of convictions, and (b) that the penalties on conviction are not adequate. Accordingly, there has been a tendency on their part to criticize the present procedure. Speaking for myself, I certainly will not convict a man who in my opinion is not guilty, neither will I impose a penalty that I do not think is justified by the nature of the offence, just because creditors might think that a bankrupt ought to be convicted and punished to the extent that they might deem sufficient. If this bill is enacted are we not going to subject the highest court in the province to criticism? Heaven knows there is already considerable criticism of our courts and other institutions. I do not think it would be advisable to add one more object of criticism.

Hon. Mr. HAYDEN: It is simply a question whether for the enforcement of the provisions in this bill it is necessary to have the High Court judges try

fraudulent bankrupts for what in many cases would be comparatively minor offences, while magistrates and county court judges have jurisdiction to try what I regard as being much more serious offences.

Mr. Justice URQUHART: Quite so. As I have said, magistrates and county court judges can sentence a man to jail for life and to be whipped.

Hon. Mr. HAYDEN: A magistrate, with the consent of the accused, can try him for almost any indictable offence and sentence him to very long terms of imprisonment.

Mr. Justice URQUHART: Yes.

Hon. Mr. ASELTINE: And do it much more speedily.

Mr. Justice URQUHART: Yes.

Hon. Mr. ASELTINE: This proposed system would seem to me to be very cumbersome and likely to cause a lot of delay.

Mr. Justice URQUHART: Yes. In the city of Toronto, where the courts are very busy, the proposed change would cause a considerable amount of delay while out in the smaller towns, for instance, Kitchener, seeing that Senator Euler is present—

Hon. Mr. EULER: There are no offences committed there of course.

Mr. Justice URQUHART: Supposing there was a sitting of the Supreme Court on the 15th of January, for the trial of cases, and there was not another sitting until June, in the event of an offence being discovered on the 25th of January, the accused could not be placed on trial until June.

Hon. Mr. ASELTINE: That would apply particularly in the western provinces where we have only a few judicial districts and two sittings of the Supreme Court every year.

Mr. Justice URQUHART: Quite so.

Hon. Mr. HAYDEN: That raises another point. I have not studied this section thoroughly, but its effect may be to take away from the accused his right of election under the Code to a speedy trial.

Mr. Justice URQUHART: Yes.

Hon. Mr. LEGER: It seems to me that the judge who has had civil matters before him would be more or less—and I am using these terms mildly—biased or prejudiced in trying these offences.

Mr. Justice URQUHART: There is that danger. Of course, there can always be an appeal against a sentence. The fact that there have not been appeals against sentences indicates that the Crown Attorney is satisfied, or that it is felt there was no purpose to be served in trying to increase the sentence by an appeal to the Court of Appeal.

The CHAIRMAN: I understand that the Supreme Court would be given power to dispose of those offences, but would not be given exclusive power to do so.

Mr. Justice URQUHART: I am not sure about that point. I have read over the bill, and I think the intention was to give us exclusive power, but it is not so expressed. Of course, we have the power under certain circumstances.

Hon. Mr. EULER: We might ask the Legal Officer what was the intention.

Hon. Mr. HAYDEN: What was intended does not matter; it is what was said. Section 159 has this to say, that these courts

are invested in law and in equity with original, auxiliary, ancillary and plenary jurisdiction in bankruptcy and in all matters of proceedings authorized by or under this act during their respective terms—

Hon. Mr. LEGER: Those powers of course are new?

Mr. Justice URQUHART: They are new under the Bankruptcy Bill, but we have those powers now.

The CHAIRMAN: I take it that you do not approve of the practice under this law to have a judge of the Supreme Court review these cases?

Mr. Justice URQUHART: Personally I think it is not the proper court.

Hon. Mr. LEGER: The court is not organized for that purpose.

Mr. Justice URQUHART: It is organized to try any criminal cases, but by section 583 of the Code we try only the major criminal cases, which keep us busy enough.

Hon. Mr. EULER: Mr. Chairman, not being a lawyer I hesitate to intervene in this discussion. It seems to me the point you have raised is an important one. These cases may not be referred to as trivial, but they are not as important as others, and in many places such as Kitchener, where there are only two sittings of the High Court a year, if these cases are left to the Supreme Court there would be no means provided for speedy adjudication; whereas if they were tried by the County Judges they could be dealt with almost immediately. It seems to me the matter of delay is an important one.

Mr. Justice URQUHART: I think so.

Hon. Mr. EULER: It should be made clear that it is not the exclusive jurisdiction of your court.

Mr. Justice URQUHART: If it is decided to include section 159 my fear is that the change in practice would give rise to innumerable irresponsible prosecutions. The launching of prosecutions should be closely supervised by the court. Section 206 (2) (3) seems to leave this matter in the hands of the court. It is my belief that in all cases the responsibility for the prosecution of any indictable offence, including these 21 bankruptcy offences, should be the responsibility of the Crown Attorney of the county. Prosecution should not be left in the hands of a trustee's solicitor, who might have an axe to grind. He may, but not in many cases, carry on the prosecution in a way that is suggested as being objectionable by the Court of Appeal in our province in the case of *Rex vs. Charmandy*, reported in 1934 Ontario Reports at page 208. If the matter is left to the discretion of ordinary solicitors, many men who are inexperienced in quasi criminal matters will be handling these prosecutions.

Under section 206 (4) if the prosecution is under the Criminal Code the Crown Attorney must be consulted and the charge laid by him. The practice in Ontario, and it has worked satisfactorily as far as I am concerned, has been to come before the Bankruptcy Judge in Toronto and place all the facts before him. If in his opinion a proper case is justified on the facts, supported by documents and affidavits, the trustee is authorized to lay a charge on the advice of the Crown Attorney. That is the responsibility of the Crown Attorney, who is the officer appointed by law in our province to handle indictable offences. In that way you have an officer who understands the procedure in these cases, who is impartial and has no axe to grind and who will conduct the prosecution, I have no doubt, to the best of his ability. I was a Crown Attorney many years ago for a period of five years and I handled a number of these cases. I know that they are very difficult. It is sometimes a problem to demonstrate to magistrates and others the guilt of the accused.

May I come again to the question of court sittings in the county towns. In most instances we have only one week in these towns and have enough work to consume all the time allotted before passing on to another town. If additional prosecutions are put upon us it would certainly very seriously interfere with our work. It has been suggested by Senator Euler that the County Judges are located in the towns, they are used to handling indictable offences of this sort

and they can conduct speedy trials. It seems to me that practice should be followed. The fact that creditors are sometimes critical is something I think should not be taken into consideration.

Hon. Mr. LÉGER: The only feature you object to is the provision of Section 159 (f)?

Mr. Justice URQUHART: There is another clause in Section 159 (1) (a):—

to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person.

It quite often happens in bankruptcy matters that either a trustee is proceeding against some private person on behalf of the estate, or some such person is making a claim against the estate. It is often difficult for a judge to determine whether it is a matter of bankruptcy or a case that should be dealt with in the regular courts. The practice has been that where an outsider is involved, the matter shall be brought before the regular courts. There is a decision of the English courts to that effect in the case of *Ellis v. Silber* (1873), Law Reports, 8 Chancery, page 83, in which it is stated at page 86 as follows:—

That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors, as the parties to the administration in bankruptcy, are subject to that jurisdiction. The trustees or assignees, as the persons entrusted with that administration, are subject to that jurisdiction. The assets which come to their hands and the mode of administering them are subject to that jurisdiction; and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition, that whenever the assignees or trustees in bankruptcy or the trustees under such deeds as these have a demand at law or in equity as against a stranger to the bankruptcy, then that demand is to be prosecuted in the Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige whatever of authority.

That is another phase of the section which I think should be left as it is.

The next subject about which I should like to speak is the proposed decentralization of the Bankruptcy Court. In Ontario we now have one bankruptcy office located in the city of Toronto. There are some receivers appointed under the Bankruptcy Act, but that is the only office of record that we have ever had. I would not like to see the process of decentralization invoked and forty-seven jurisdictions created. We have records for years, and those records will continue to build up. There is one place of record in the province where searches can be made. For instance, a person who is passing a title must search for bankruptcy against the man from whom he is buying. Having only one office also is conducive to uniformity of practice.

Section 160 of the act provides that the Local Registrars, forty-seven in number, shall be Registrars in Bankruptcy, and that the judicial powers of the Registrar are to be exercised by the Master of the court, but if there be no Master at that point, by the registrar if he is a duly qualified lawyer, or otherwise by the county judge. There is now power under the present act to appoint extra registrars in bankruptcy if necessary. I think it is in the public interest that there should be only one office of record for the province. This practice has been in vogue, as I said, since about 1920. If all offices were made offices of record it might require forty-seven searches to determine whether a man is bankrupt or not.

HON. MR. ASELTINE: Could that situation not be overcome by a system of double filing as is done in Surrogate matters?

MR. JUSTICE URQUHART: Yes; the information is reported to Toronto at the present time.

HON. MR. ASELTINE: In Surrogate matters one can make a search with the Surrogate Registrar at the provincial capital and can get all the information there no matter where letters of administration were applied for.

MR. JUSTICE URQUHART: We can do that in Toronto, I think.

HON. MR. HAYDEN: Is there enough work for forty-seven different jurisdictions?

MR. JUSTICE URQUHART: I do not think there would be. The bulk of bankruptcy work is in the city of Toronto, and most of the creditors are there or in the larger centres.

HON. MR. ASELTINE: Have you any record of the number of bankruptcies in the province of Ontario last year?

MR. JUSTICE URQUHART: There were not very many last year, because these are extraordinarily good times; but my recollection is that in 1932, which I suppose was the worst year of the depression, we had about one thousand bankruptcies. I doubt if we had two hundred last year.

THE CHAIRMAN: Mr. Reilly is here to give us exact figures a little later.

MR. JUSTICE URQUHART: Another objection to decentralization is that you might have a petition in bankruptcy filed at two places or perhaps half a dozen places by different creditors on or about the same day, which would make for great confusion.

HON. MR. MORAUD: Could the jurisdiction not be the domicile of the debtor? If the debtor's domicile was in Toronto, then the jurisdiction would be in Toronto.

HON. MR. LEGER: That is done under the Bill of Sale Act.

MR. JUSTICE URQUHART: The point is that there is a disadvantage in having several places of registry. In 1932, when we had roughly one thousand bankruptcies in Ontario, it was not considered necessary with all that work to have more than one registrar. Why make a change now when the number of bankruptcies is so small?

HON. MR. MORAUD: Should we not consider the rights of debtors? They ought not all be required to go to Toronto or any other one place in the province.

HON. MR. HAYDEN: I doubt if this proposed amendment is intended to be in the interest of the debtors.

HON. MR. MORAUD: Well, should we not look upon it from the point of view of the interest of all parties concerned?

HON. MR. ASELTINE: I understand the creditors are asking for this.

HON. MR. HAYDEN: The creditors might be anywhere in the province.

HON. MR. MORAUD: If the debtor is in Hamilton and most of the creditors are there also, should they all have to go to Toronto?

MR. JUSTICE URQUHART: In practice it hardly works out that way. The creditors are pretty widely scattered, as a rule. As a matter of fact, many of them are in Montreal. I am astonished sometimes at the large number of creditors who are from Montreal, though of course that is the chief centre for certain lines of business.

Under the Act the Registrar in Bankruptcy is given wide powers. He can make receiving orders when unopposed, hear all unopposed and ex parte applications, make interim orders, hear appeals in certain cases, and so on. I

think there should be careful supervision of these matters by the court. It is important that expenses of administration should be carefully checked, and that trustees' disbursements and remuneration be approved, and also that solicitors' bills of costs be taxed. The proper place for passing accounts is in the courts, where the records are readily available to everyone.

Perhaps it would answer the question raised by Senator Moraud if I pointed out that under the present Bankruptcy Act a good many steps in the administration of a bankrupt estate can be taken outside of Toronto. By the way, I am not holding any brief here for the city of Toronto. Voluntary assignments in bankruptcy are filed with the Official Receiver in the locality of the debtor; and there are 16 Official Receivers in various parts of the province. In the second place, power is given to the Official Receiver in each case when he receives an assignment to direct the disposal of perishable goods, hold meetings of creditors, fix bonds of trustees, and so on. Thirdly, trustees are appointed at the meetings of creditors held in the locality of the debtor, and such trustees immediately proceed to administer the estates. Claims are settled by the trustees and inspectors without application to the Court, except when there is an appeal from their decision. Under section 43 of the act, they can do almost anything within reason, without recourse to the court. Furthermore, trustees can apply personally for their discharge. In a great many estates in which the authorized assignments are made outside Toronto, the only applications to the court at Toronto are for the discharge of the trustee and debtor, and for the taxation of solicitors' bills.

Hon. Mr. MORAUD: Do you not think that simplification of the administration of justice is desirable, and that centralization is a wrong principle?

Mr. Justice URQUHART: I would not agree with the latter, with respect. I have an idea that the more uniformity you can get in the practice with regard to a complicated statute like this, the better. Although all the High Court Judges in Ontario have jurisdiction in bankruptcy, we have only one Judge who is assigned specially to bankruptcy work, and we have one Registrar. Mr. Reilley was the Registrar for many years, and since 1934 the Registrar has been Mr. Cook, who is a very competent man. Issues may be tried outside Toronto. Although as a rule I sit exclusively in Toronto in these matters I have on occasions when the convenience of the parties demanded it sat in London and a number of other places to hear important matters. As Bankruptcy Judge, I have power to direct an issue to be tried before any Judge or Officer of the Court in any part of the province. This power has been used in many cases. One that I might cite is *re Bozanich*, 23 C.B.R. 234, which at my direction was tried in County Court at Windsor. An appeal from that court's decision was taken to me, and the case ultimately went to the Supreme Court of Canada. I am sure the Honourable Mr. Martin would remember it very well. More recently there was the case of Paul Croteau, in which I directed that the claims of more than one hundred wage-earners be tried at Hearst, which is not a county town but was their place of abode, before the District Court Judge of the District of Cochrane. Many trials have been held in the locality of the debtor, and I do not see why it is necessary to change the Act.

I come now to my third point. Whereas the Bill aims at decentralization, it would centralize certain powers in the Superintendent of Bankruptcy. I have the utmost confidence in the present Superintendent, who has been a friend of mine for many years, but he may not always hold the office.

Section 91 and other sections provide that trustees in bankruptcy shall apply for their discharge to the Superintendent instead of to the Court. It is my submission that the present Act should not be changed in this connection.

Hon. Mr. HAYDEN: Under the Bill the receiving order would be made by the Court, would it not?

Mr. Justice URQUHART: It would be made by the Registrar, if unopposed, but by the Judge if opposed.

Hon. Mr. HAYDEN: But he is an officer of the Court.

Mr. Justice URQUHART: Yes.

Hon. Mr. HAYDEN: Then the proceedings are conducted in the Bankruptcy Court?

Mr. Justice URQUHART: Yes. They are conducted in the locality of the debtor as a rule.

Hon. Mr. HAYDEN: Why should the court not be the one to discharge the debtor?

Mr. Justice URQUHART: That is my point exactly, Senator. I do not think there should be a change. If I read the Bill rightly, the trustee has no right of appeal if the Superintendent refuses the discharge, unless a creditor has opposed the discharge.

Section 82 provides that the trustee's accounts shall be passed and approved by the Superintendent instead of by the Court. This would have to be done from the remote parts of Canada by correspondence, I assume, because most estates would hardly pay the expense of sending a trustee to Ottawa to justify his accounts. My submission is that the trustee's accounts should be passed by the Court. It always has been the practice for the Court to pass the accounts of trustees, liquidators, receivers, executors and so on.

There are other sections which seem to divest the Court of its jurisdiction. I have referred to these in my memorandum, which I shall leave with the committee. Unless there are some questions, I do not wish to take up any more time, as there are others waiting to be heard.

The CHAIRMAN: I am pleased to know that we may have this memorandum for our own use.

Mr. Justice URQUHART: In the memorandum I have referred to a number of other matters that I thought ought not to be changed. The reference to various sections and points are indexed.

Hon. Mr. EULER: Have you any suggestions to make as to what, if anything, should be added to the Act?

Mr. Justice URQUHART: I am afraid I am a stand-patter on the Act. It has worked very smoothly. I have to thank the former Judges of Ontario and the other provinces for the spade-work that they did when the Act was first passed: their work has made my duties as a Bankruptcy Judge a very pleasant and comparatively easy one.

The CHAIRMAN: Would you not consider it dangerous to change many things in the Act since we have behind us only five years of jurisprudence?

Mr. Justice URQUHART: Yes, that is my point largely. The chief objection have to any change indeed is to this section 159.

The CHAIRMAN: In your experience would not even a small change give rise to new interpretations of the law?

Mr. Justice URQUHART: Yes.

The chairman has just reminded me of one other matter that I intended to deal with, that is, the discharge of the bankrupt. There is a provision in this bill for what is called the automatic discharge of the bankrupt. My opinion is, and I have so expressed it in two or three judgments, that the trustee and the bankrupt should be discharged together; that is, the trustee should not have his discharge before the bankrupt has his, and vice versa. I am not in favour of the present proposal to provide for the automatic discharge of the bankrupt.

Hon. Mr. MORAUD: Don't you think it would be unfair in many cases to tie up the trustee with the debtor? Oftentimes the debtor cannot get his discharge right away, it may be years after when the creditors are more inclined towards leniency, yet all this time the trustee would be tied up to the debtor.

Mr. Justice URQUHART: Yes, that is so, but the difficulty of the present practice is this. Your trustee dies or he moves away, or in some cases he has gone into bankruptcy himself—I recall one instance where he went to jail. It is very difficult after a number of years for a debtor to get his discharge. As I recall, there is no provision in the Act for his discharge without the intervention of the trustee. I am afraid I have broken the law occasionally by allowing the bankrupt to make an affidavit himself, for I took the view that necessity makes the law.

Section 146 shifts the onus of making the application for discharge from the debtor to the trustee. This is taken apparently from the American Bankruptcy Act. Two or three years ago I had some correspondence with Mr. Henry Chandler, when he asked me to advise him as to some way in which the practice of automatic discharge could be improved. I am speaking from recollection now, but, as I recall, the procedure in the States was found not to be satisfactory and was to be amended. I understand there is at present before Congress an amended Bankruptcy Bill. If I had had more time I would have been able to run that down, but it can be easily ascertained.

Hon. Mr. HAYDEN: We will do that.

Mr. Justice URQUHART: The American Act is different from ours in that it has no provision for making after-acquired property of the bankrupt available for distribution among his creditors, except that "all property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance, shall vest in the trustee." Under our Act all property which may devolve upon or be acquired by a bankrupt before his discharge becomes the property of the trustee.

Another difference in the bankruptcy law of the two countries is that the American Act does not provide for conditional discharge as we have it under section 143.

Under our procedure the bankrupt makes a special application for his discharge, and this places the responsibility on him of satisfying the court as to his conduct and that he is entitled to his discharge. This has always been the practice under our Act. I am afraid that under section 146 (1) if the bankrupt does not wish to apply for his discharge he will not notify the trustee. While I think the present system has its disadvantages, I consider it is preferable to that which is now proposed.

Hon. Mr. HAYDEN: What do you think of a statutory limitation?

Mr. Justice URQUHART: That would not be feasible because some estates may take years to wind up, others may be distributed very speedily.

Hon. Mr. HAYDEN: You do not need the debtor to complete the winding up. The trustee just takes over the estate.

Mr. Justice URQUHART: Yes. The debtor has to satisfy the court that the bankruptcy was due to circumstances over which he had no control.

Hon. Mr. HAYDEN: That should be done within a year, should it not?

Mr. Justice URQUHART: It might be.

Hon. Mr. HAYDEN: I should like to see the bankruptcy shortened and more concentrated; get the job done without delay.

Mr. Justice URQUHART: That is up to the trustee and the creditors. It is a businessmen's act, and they do their work very efficiently.

Hon. Mr. HAYDEN: I am not taking up the position of the debtor, but he is subject to the second call of the creditors and during that time he cannot do anything else.

Mr. Justice URQUHART: That might be worked out in some way, but at the moment I am not ready to state specifically how it should be done.

The bill proposes another change on which I am not expressing any opinion. At present there are often two bankruptcies and sometimes three, and the debtor has not been discharged from any of them. Then he acquires property worth \$2,000 or \$3,000, the creditors become aware of it, and seize it. Under our law that is always the property of the first bankruptcy. I believe under the English law they allow subsequent bankruptcies to share *pari passu*. But in the recent case of *re Hord*—I do not know whether it is reported yet—I pointed out that under our present system the first bankruptcy is entitled to any after-acquired property, and that anyone who dealt with the bankrupt, who, so to speak, is financially dead, should do so at his own peril.

Are there any other questions, Mr. Chairman?

The CHAIRMAN: I think not. You have rendered an important service to this committee, Judge, and on their behalf I wish to convey to you their thanks for your attendance.

(For memorandum by Mr. Justice Urquhart, see Appendix A).

The CHAIRMAN: Mr. W. J. Reilley, K.C., Superintendent of the Bankruptcy Administration of the Department of the Secretary of State, is here to answer a question which was asked the other day as to the number of bankruptcies during the past year.

Mr. REILLEY: Mr. Chairman, in the Ottawa Journal of the 11th instant there appeared a report on the number of bankruptcies in Canada. The number is given as 60.

Hon. Mr. HAYDEN: When?

Mr. REILLEY: 1945. We can use that for what it is worth. My annual report for 1945 shows there were 264 failures, not including liquidations under the Winding Up Act, creditors arrangement compositions, bulk sales or similar proceedings. I just want to place that information before you, to correct the impression which may have been conveyed by the press report.

Hon. Mr. HAYDEN: Bulk sales are not necessarily indications of bankruptcy.

Mr. REILLEY: But in 99 cases out of 100 they are failures. There is the odd case where a man makes a bulk sale. I simply mention that to direct attention to the inaccuracy of this press report—60 failures against my reported 264 failures.

Hon. Mr. ASELTYNE: Where did they get the information?

Mr. REILLEY: I do not know. They did not get it from me.

The CHAIRMAN: Gentlemen, we have in attendance Mr. Terence Sheard, Assistant General Manager of the National Trust Company, Toronto, representing the Dominion Mortgage and Investments Association, and Mr. R. B. F. Barr, of the Ontario Bar. I will call on Mr. Sheard.

Mr. SHEARD: Mr. Chairman and honourable senators of the committee, I appear on behalf of the Dominion Mortgage and Investments Association. I imagine that members of the committee know of this association. It is an association of loan, trust and life insurance companies to consider matters of mutual interest. When this bill was introduced the association formed a special committee to consider its provisions from the point of view of investors and trustees for investors. I am the chairman of that committee, and it is in that capacity that I am appearing before you today.

We have prepared a brief, (See Appendix B), which deals with only one aspect of the bill, but an aspect which we consider of great practical importance. Instead of reading the brief, which is always rather a dull process, with your permission I should like to speak to it and draw the attention of the committee to some of its more important aspects.

It is our understanding of the bill that it proposes to bring all corporate reorganizations under the terms of the Bankruptcy Act, and do away with procedure under the Companies Creditors Arrangement Act, although this Act is not specifically repealed in terms so far as I can discover.

The association believes that that would be a mistake. It thinks that the interest of investors, while technically they may in some cases be creditors, is really of a different type from that of ordinary creditors. Therefore it is quite appropriate to have two different types of procedure: in England reorganizations are of course under the Companies Act, and ordinary compositions under the Bankruptcy Act. It is true that in the United States company reorganization come under the Bankruptcy Act because of the constitutional problem involved, but you may remember they are in a special part of the Act passed as a separate bill, and it is usually referred to colloquially as the Chandler Act.

The association recognizes that in the administration of the Companies Creditors Arrangement Act in the past there have been abuses and arrangements have been put through under that Act that probably were not fair to the creditors. Therefore the association is putting forward certain proposed amendments, which it submits for the consideration of the committee, to be made to the Companies Creditors Arrangement Act. We are not putting forward those amendments in any spirit of presumption, for we recognize that they will be carefully scrutinized by this committee and by the law officers of the Crown; but until the thing is actually put down in black and white it is often very difficult to understand just what is proposed.

I should like to say that these amendments have not been hastily prepared or ill considered. The association went into this matter a good many years ago and in 1943 it asked three very experienced corporation lawyers, Mr. Gilbert Stairs of Montreal and Mr. Kaspar Fraser and Mr. R. B. F. Barr—he is here with me today—both of Toronto, to prepare amendments that might be considered suitable for the Companies Creditors Arrangement Act. The work was not gone on with at the time owing to the war, but the amendments presented for your consideration today are substantially the amendments prepared by counsel at that time, reconsidered and gone over by the representatives of the various companies concerned.

Perhaps it might be useful to the committee for me to recall something of the history of the Companies Creditors Arrangement Act. Prior to the first war, when all or most of Canada's foreign financing was done in England, the practice in issuing securities was to follow the English precedents, and practically all trust deeds contained clauses permitting a majority of the bondholders in a meeting to vary the terms of the contract. Later, when American financing became commoner, in the twenties, those provisions were deleted from a great many trust deeds because they were not usual in the United States. So when the depression came along it was discovered that a large number of companies had to be reorganized, and that the provisions of the trust deeds were inadequate to permit a reorganization by agreement, and in reality there was no way in which the companies could be reorganized at all.

It was as a result of that situation that the Companies' Creditors Arrangement Act was passed. Its provisions were very largely taken from the British Companies Act of 1929, and the body of British authorities and precedents of that act have been used in the Companies' Creditors Arrangement Act. Nevertheless at that time, and since, there was no way in which a company could make any kind of compromise with its creditors—that is an ordinary trading

company—without going into bankruptcy, except under the terms of the companies' Creditors Arrangement Act. Therefore the provisions of that act were taken advantage of not only by the type of company for which it was fundamentally intended to serve, but by a great many other companies.

Investors, bondholders, debenture holders and shareholders have methods of organizing trustees for bondholders and so forth and are in a position to safeguard their interests; but the ordinary trade creditor does not have an organization of that kind, and so I think it is fair to say that in larger cases, the type with which my association is concerned, the act on the whole has worked reasonably well. In the case of smaller companies, who were trying to make composition with their creditors, it did not work so well. We should consider what happens in England, where a company reorganization will come before a very small group of extremely experienced judges; it is handled by qualified people and the practice is very closely supervised by the court. Here we have the act administered from one end of the country to the other, and it is inevitable that in some cases applications are brought before judges who are not very experienced in such matters and who do not realize that because the application is unopposed it is not necessarily an application that should properly be granted. In any rate, there is the feeling that procedure probably should be tightened up, and we are proposing amendments for that purpose, which do not disturb the basic principle on which the act proceeds.

The basic principle of the Companies' Creditors Arrangement Act is reorganization and composition by consent. What the act does is to enable the consent and approval of a certain specified majority to be applied to everybody of the same class. That is necessary, because in the case of bondholders and bearer bonds widely scattered one never could possibly locate them all, and therefore anything that approached 100 per cent agreement would be physically impossible. Nevertheless, the whole procedure is based upon consent, and there is no suggestion of disturbing that principle.

It is proposed to introduce an initial and additional steps in the procedure way of preliminary hearing, and it is provided that representatives of the different classes of security holders or creditors shall be given notice of such hearing and will have an opportunity at that time to present to the court, before any expenses are incurred or meetings called, any objection or comment to the company's proposals. We think that will be of considerable practical advantage in all cases, not only in the cases in which abuses have occurred. At the present time, and even in the larger cases, the whole carriage of the proceedings is in the hands of the company's lawyers; if they make a decision which the final motion to the court for approval turns out to have been unwise because they have called their meetings on too short notice, or persuaded the court in respect of some technical flaw, the only thing then to do is commence proceedings all over again, resulting in great expense and loss of time.

Another point on which abuse and difficulties have occurred was in connection with amendments. Under the present Companies' Creditors Arrangement Act there is nothing to prevent a plan being amended at a meeting of creditors—and of course it is inadvisable to prevent all amendments. The suggestion is that any amendment is to be made at a meeting, which substantially and adversely affects the interests of the creditors, that the chairman must go back to the courts for direction as to how long the period of adjournment should be and what additional notice should be given and so forth. This is what has happened before: A plan would go out which was quite favourable to the creditors, and they would all send in proxies voting in favour of the plan. When the meeting was called and the men with the proxies were there, amendments would be made which totally changed the whole basis of the plan, and the votes would be given in favour of it; and as this feature was not drawn to the attention of the court

on the final approval the creditors woke up to discover that they were getting something very different from what they thought they would get. It is intended to prevent such a practice.

There have been a good many irregularities in connection with the solicitation of proxies. It is considered that some provision should be added tightening the procedure. May I say that the suggestion of a preliminary hearing, also to some extent the provisions with respect to the solicitation of proxies based upon the Bankruptcy Act in the United States. They do not go quite as far, but we would think that is probably not necessary in our situation.

Hon. Mr. EULER: What suggestion do you make in regard to the solicitation of proxies.

Mr. SHEARD: May I read from page 6 of the draft bill, section 29.

It shall not be lawful for any person to solicit or knowingly permit the use of his name to solicit any authorization (which expression shall include any instrument appointing a proxy, consent or authorization) in connection with any compromise or arrangement unless the following information is presented in writing to each solicited person at the time of the first solicitation:—

- (1) if the solicitation is by or on behalf of the debtor company, a statement to that effect; or
- (2) if the solicitation is not by or on behalf of the debtor company, the name or names of the persons on whose behalf or at whose instigation the authorization is being solicited and particulars of the classes and aggregate amount of securities, obligations, claims or shares of, against or in the debtor company which are owned or controlled for voting purposes by any such persons; and
- (3) if the solicitation is by a person who is entitled to or may receive compensation or reimbursement of expenses for soliciting or recommending the giving of an authorization, a statement to that effect.

30. No person shall solicit or knowingly permit the use of his name to solicit any authorization by means of any statement which in his knowledge was at the time and in the light of the circumstances under which it has made false or misleading in any material particular.

Then there is the provision of a penalty in the event of contravention of those sections. It is our hope and belief that if amendments along those lines were made to the Companies' Creditors Arrangement Act that most, possibly all of the abuses under the act, which have occurred in the past would be eliminated. I may say that we have discussed this matter at some length with other groups, particularly those representing the ordinary unsecured creditor, like the Board of Trade of the city of Toronto and others. I think the committee will find that when it examines the briefs which I understand are going to be submitted by groups of that kind, that the general recommendations which we are making are in line with their recommendations.

Perhaps I should revert for a moment and describe in a little more detail why we feel that it is unwise to attempt to do what this bill purports to do, namely, to bring all company reorganizations under the Bankruptcy Act, in the first place, and as I have said, because the interests of investors are very different from those of ordinary trade creditors, the practical difficulty of accomplishment seems to us to be very grave. I know that the Superintendent of Bankruptcy has been considering this matter for ten years, and therefore I do not think we can say the suggestions he is putting forward are ill-considered. At the same time I think it must be admitted that if this bill passed in this form no large company with securities outstanding in the hands of the public could ever be reorganized. I do not think that is an over-statement.

Hon. Mr. EULER: Mr. Reilley, is shaking his head.

Hon. Mr. HAYDEN: It is a matter of opinion, but I am inclined to agree with you.

Mr. SHEARD: For example, if you will turn to section 104 of the proposed act you will find that the secured creditors before voting at a meeting must place their securities and they are only entitled to vote for the difference between the value of their securities and the amount of their claim. How could you ever apply a section of that kind to a meeting of bondholders? It would be an impossibility. Furthermore, you will find that the act requires that notice of the proposal shall be given to every creditor affected. In the case of bearer bonds, or bearer share warrants, how would it be physically possible to give notice to every bondholder? You could not possibly find out who they were; you would not know them. That is a physical impossibility. There are provisions, for example, requiring a list of shareholders to be sent out to anyone who requests them. In a large company the list of shareholders might run to 10,000 or 12,000 names. The preparation of that list would cost ten cents per name; so that every time that is done you incur an expense of a thousand dollars. The purpose of that is very obscure to me.

There is another reason. When reorganization of a large company finally comes down to the place where action can be taken on it, after long periods of consultation, argument and negotiation between representatives of the different groups, the need for action is urgent. It may be, for example, that new capital and new management are coming into the situation, and they are not willing to sit around indefinitely waiting till somebody makes up his mind whether the terms are fair or not.

Hon. Mr. HAYDEN: Supposing the stage of bankruptcy is reached, then the difficulty of attracting new money into the enterprise would be an important factor, would it not?

Mr. SHEARD: That is quite true. If the matter is one of great urgency, the ability to delay the plan is really in effect the ability to defeat it. Under this scheme I think it would always be possible for the Superintendent of Bankruptcy and conceivably the Minister to whom he is responsible to delay any plan by simply ordering a further investigation. As a matter of fact, I think it would be very difficult for the minister to refuse to order an investigation. It is not easy for a minister to get up in the house and explain why he has not investigated something; it is much easier for him to state that he has investigated something and then to justify his conclusion after the investigation has been made. Any minority interest which was trying to delay or defeat a plan would of course immediately request the minister or the Superintendent to make a further investigation, and would put forth all sorts of allegations to support the request, in which circumstances I fear that an investigation would have to be made. If we get to the point where no reorganization of a large company can be made unless the Secretary of State consents or approves, we shall have reached a state of paternalism which goes beyond even the operations of the S. E. C. in the United States. Also, grave complications might arise because the provincial governments often take a great deal of interest in these things. As the members of the committee know, it is really not practicable to reorganize a newsprint company, for example, without getting the approval of the provincial government concerned. I think that was a lesson learned from the Abitibi proceedings. If it is also necessary to get the approval of the Dominion Government, and if the points of view of the two governments conflict, I should think the position of the investors in the company in question would be very unhappy.

We feel, therefore, that these proposals are fundamentally unwise, and that the thing desired, namely, rectification and elimination of certain abuses that have occurred in the past, can be accomplished by relatively simple amendments to the Companies' Creditors Arrangement Act.

One of the basic principles of the present Bankruptcy Act is the preservation of the rights of secured creditors, and we believe that principle should be left undisturbed. In our opinion the amendment whereby the rights of secured creditors would be brought for adjudication under bankruptcy is a dangerous one.

The arguments that I have summarized here are set out more fully in the brief.

HON. MR. HAYDEN: Take a typical case of a company with at least one bond issue outstanding, with preferred and common shareholders and a number of creditors. If you were trying to operate such a company under the proposed new Bankruptcy Act, what would the problems be? Would you just develop that a bit?

MR. SHEARD: Well, first of all you would have to appoint a trustee, who would have to make an investigation. That in itself would probably mean doing a lot of work that had already been done.

HON. MR. HAYDEN: Suppose there has been some default on the bond issue. Then you are going to have a conflict between the trustee for the bondholders and the trustee in bankruptcy?

MR. SHEARD: You very well might.

HON. MR. HAYDEN: There might be conflict and that is not going to solve anything. This bill was designed to deal with the problems of corporate financing and the difficulties that might arise when a company became insolvent.

MR. SHEARD: Quite so. Section 23, for example, gives the court power to appoint a committee, and the committee power to put forward a plan, and the court power to approve it. An amendment of that kind is entirely contrary to the whole principle of compositions with creditors and shareholders, which is that the compositions should be made by consent and voluntarily. I fancy that the amendment was prepared with the Abitibi case in mind. There was great difficulty in getting agreement in that case. But, after all, hard cases make bad law, and I think that in the vast majority of cases agreements can be reached. Our feeling is that that section, far from facilitating agreement, will probably make agreements more difficult. Indeed, I think that if anybody looks at the Part II carefully from the point of view of how it would operate in the reorganization of a large company with various classes of creditors, I think he is bound to reach the conclusion that it would be extremely difficult, if not utterly impossible to operate.

There are one or two other points. I notice that throughout the act there are minor changes of phraseology, which perhaps are not intended to have much substantial effect. As the members of the committee realize, that sort of thing is very tricky. There are sections that have been in the Act for a good many years, and there is a long chain of judicial decisions on them, and then some slight changes are made in the wording. Well, the presumption is that it was intended to change the meaning, so the question arises in each case: To what extent is the meaning changed, and to what extent are the old decisions good law? I do not want to weary you with illustrations, but there are two that come to mind. One is in connection with section 26, "Stay of Proceedings." Subsection (2) says:—

Subject to the provisions of sections one hundred and eleven, to one hundred and eighteen inclusive, of this Act and the preceding subsection any secured creditor or person holding security on the property of the bankrupt may realize or otherwise deal with his security.

the words "and the preceding subsection" have been added, and, according to the explanatory note, this has been done to broaden the effect of the section. Does that mean that proceedings by a secured creditor can be taken only with the leave of the Court? If that is the intention or the result of the change, I think it is very questionable.

Another example of something along the same line is section 43 (3):—

No person shall, as against the trustee, be entitled to withhold possession of the books of account belonging to the *bankrupt or any papers or documents relating to the accounts or to any trade dealings of the bankrupt* or to set up any lien thereon.

Could that give a trustee in bankruptcy the right to demand books that were the possession of a receiver or manager? Presumably under the old section, the books of account were covered by security they did not belong to the bankrupt, but he had only an equity of redemption in them, and the receiver had rights of possession against anybody. Well, with the addition of the underlined words, although the bankrupt might not own the books, the trustee perhaps could be entitled to them. I refer to this just to show the kind of question that might easily arise when minor amendments of this kind are made.

Hon. Mr. LEGER: The explanatory note says that the change has been made in order that what was formerly Rule 167 should be a matter of substantive law rather than of procedure. So there would appear to be no change.

Mr. SHEARD: Is there no change, Senator, when you take something out of a rule and put it in a substantive provision of the Act?

Hon. Mr. LEGER: If the rules have the effect of law there is no change.

Hon. Mr. HAYDEN: A rule could not ordinarily have any greater effect than the statute under which the rule purported to be made.

Hon. Mr. LEGER: That is right.

Mr. SHEARD: The explanatory note also says that the added words have been taken from section 99 (3) of the Australian Act.

Hon. Mr. HAYDEN: It looks as if this might provide an opportunity for conflict between the receiver or manager and the trustee?

Mr. SHEARD: I would be apprehensive of that, certainly.

Mr. Chairman, I expect to be in Ottawa next Wednesday, which I understand is the next sitting of the committee. If at that time any member of the committee desires to ask any questions about the proposed amendments to the Companies' Creditors Arrangement Act, I shall be very glad to be present.

Hon. Mr. HAYDEN: I think that is an excellent idea.

The CHAIRMAN: We will no doubt take advantage of your offer.

Hon. Mr. HAYDEN: Have you given any thought to the conflict of jurisdictions? The provinces have jurisdiction in property and civil rights, so I suppose a deed of trust, which is a contract, would primarily be a matter within provincial jurisdiction.

Mr. SHEARD: Frankly, those provisions of Part II as applied to provincial companies that are not bankrupt seem to me of very doubtful validity indeed. I have not read recently the cases on the Winding Up Act. As you know, there are a great many of them and they are not all easy to reconcile. We do know, though, that Companies' Creditors Arrangement Act was referred to the Supreme Court of Canada, where its constitutional validity was upheld, so that is settled. I should think it is fairly safe to assume that whether all the provisions of this new bill are ultimately held to be intra vires of the Dominion Parliament or not, they certainly would be called into question and protracted litigation would almost certainly ensue.

Hon. Mr. HAYDEN: A lot of refinancing has been done in the last few years on the basis of the existing law.

Mr. SHEARD: Take this example. A perfectly solvent company, with bond issue maturing in a year or two, does not want to call them and pay them off or float a new issue, but wants to extend the existing issue. Assuming it to be a provincial company, it is very difficult for me to see how the Dominion Parliament can get jurisdiction to legislate with respect to a transaction of that kind. Yet certainly the provisions of this bill contemplate such jurisdiction because section 11 says:

- (1) Any person may either before or after bankruptcy make proposal to his creditors, or to any class of them for
- (b) an extension of time for payment thereof.

Hon. Mr. LEGER: I would presume that that would apply only to insolvent companies.

Mr. SHEARD: Quite so. I think it is to be limited in that way, but it is not so limited in terms.

Hon. Mr. HAYDEN: The point is that it might lead to litigation.

Mr. SHEARD: I think it would be almost certain to do that. Another example is section 22. That section is of course in the present act, but presumably the present act only makes composition possible where the company is bankrupt. Now the proposal is to make them possible where the company is not bankrupt. I do not see how that section could possibly apply to a provincial company that was not insolvent.

Hon. Mr. LEGER: Could it apply even to a dominion company that was not insolvent?

Mr. SHEARD: Parliament can legislate with respect to dominion companies.

Hon. Mr. LEGER: But not with regard to property and civil rights.

Hon. Mr. HAYDEN: There appear to be some serious problems in this part to be considered.

The CHAIRMAN: I understand Mr. Sheard has not followed his brief very closely, and that he would like to have the brief included in the proceedings.

Mr. SHEARD: Yes, Mr. Chairman.

The CHAIRMAN: Would Mr. Barr care to add anything to what has been said?

Mr. BARR: No, Mr. Chairman, I have nothing to add to what Mr. Sheard has said. If there are any questions to be asked next Wednesday, after the brief has been read, I would be glad to come back and endeavour to answer them.

The CHAIRMAN: If you wish to come, we shall be pleased to have you.

Hon. Mr. HAYDEN: I should think that it might be left to Mr. Sheard and Mr. Barr to arrange which of them will be here next Wednesday.

Mr. SHEARD: We will try to arrange to have someone available that day.

(For Brief of the Dominion Mortgage and Investments Association, see Appendix B.)

The committee adjourned until Wednesday, June 26, at 10.30 a.m.

APPENDIX A

MEMORANDUM PRESENTED BY THE HONOURABLE MR. JUSTICE
GEORGE A. URQUHART, OF THE SUPREME COURT OF ONTARIO

CONTENTS

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FOUR MISCELLANEOUS SECTIONS (SECS. 53, 92, 110 AND 9)

In view of the fact that the proposed Act introduces radical changes which rest the Court of jurisdiction in many important matters and adds new matters to its jurisdiction; that it centralizes many matters in other hands, and proposes to decentralize the functioning of the Court, may I, as Bankruptcy Judge of the High Court of Justice of Ontario, submit the following observations on some of the sections, where changes are proposed and which affect the administration of the Act by the Courts.

Speaking generally, the present Act which is based largely on the English Act has been found satisfactory in most respects. In this Bill many sections of the Act have been rearranged and the wording changed.

The Courts have construed the sections of the present Act during the course of many years, and the law has been settled and clarified. If the wording of sections of the Act is changed unnecessarily, much of the established Juris-

prudence and case law of Canada, and also of England in so far as it affects Bankruptcy law in Canada, would become obsolete, and this would probably lead to fresh litigation.

POWERS ARE TAKEN AWAY FROM THE COURTS AND VESTED IN THE SUPERINTENDENT OF BANKRUPTCY

One of the most radical changes in the new Act is the substitution of the Superintendent of Bankruptcy for the Court in so many cases, with no right of appeal to the court except in the one case of a creditor opposing the trustee's discharge.

Section 91. This section provides that trustees in bankruptcy shall apply for their discharge to the Superintendent of Bankruptcy instead of to the Court. These applications should be made to the Court, where all interested parties may be heard and the matter thoroughly considered on proper evidence, with the usual right of appeal. Otherwise, there is no assurance that correct decisions will be arrived at. Such matters cannot be properly dealt with by correspondence. This section gives the trustee no right of appeal if the Superintendent refuses the discharge, unless a creditor has opposed the discharge.

The same objections also apply to the following sections which substitute the Superintendent for the Court:—

Section 82. Provides that the trustee's accounts shall be passed and approved by the Superintendent instead of by the Court. The trustee's accounts should be passed by the Court. It has always been the practice for the Court to pass the accounts of trustees, liquidators, receivers, executors, administrators, committees in lunacy, etc.

Sections 90 (6) and 41 (3) provide for the remuneration of the trustee, being fixed in certain cases by the Superintendent instead of by the Court without the usual right of appeal.

Section 39 (7) provides:—

The Superintendent may give such instructions to trustees regarding the estates under their administration *as may be deemed necessary and expedient*.

Any application for directions should be made to the Court where all interested parties may be heard and the matter thoroughly considered on proper evidence, with the usual right of appeal. Such matters cannot be properly dealt with by correspondence.

Section 39 (8) provides:—

The Superintendent may intervene in any matter or proceeding in Court *as he may deem expedient* as though he were a party thereto.

Intervention by the Superintendent should only be by leave of the Court. Otherwise, proceedings might be unduly prolonged and unnecessary costs incurred.

Section 39 (6) provides:—

—and the administration of any estates to which a trustee has not been appointed under the provisions of this section may be administered by the Superintendent in such manner *as he may deem expedient* for which purpose he shall have all the rights and powers of a trustee under this Act.

Section 39 (9) provides:—

The Superintendent may take over and complete the administration of all uncompleted estates in such manner *as he may deem expedient*.

These sub-sections contain no provision for title to property of the debtor vesting in the Superintendent, who would not be able to sell or convey the same. There is also no provision for the Superintendent accounting either to the creditors or to the Court for such uncompleted estates.

"As he may deem expedient". Such unlimited power should not be given one person, but should remain in the Court.

The same objections apply to Section 39 (10):—

—the Superintendent according as the circumstances warrant may cause such funds to be distributed or paid to the persons entitled thereto according to their respective legal rights *in such manner as he may deem proper*.

The distribution of the funds of all bankrupt estates should be subject to the supervision of the Court, as in the case of trustees, executors, etc.

Under section 108 (8 and 9) where the consent of the inspectors cannot be obtained, power is given to the Superintendent or the Court to exercise the powers of the inspectors. The inspectors as representing the creditors are given very wide powers under section 47 (1) involving the claims of creditors, the disposal of very valuable assets, etc. If the consent of the inspectors cannot be obtained, such matters should be dealt with only by the Court, where all interested parties may be heard and the matter thoroughly considered on proper evidence, with the usual right of appeal.

The comment opposite section 91 of the present Bill is as follows:—

No material change, except to substitute the Superintendent for the Court.

This sums up the general effect of these sections of the new Act.

In his note opposite section 160, the Superintendent states:—

The purpose of this section is to decentralize the courts—.

The effect of this new Act is to centralize the greater part of the administration of bankrupt estates throughout Canada in the Superintendent of Bankruptcy at Ottawa.

DECENTRALIZATION OF BANKRUPTCY COURT

Another radical change introduced by the new Act is the splitting up of the bankruptcy Court in Ontario into 47 different courts, with all the resulting confusion.

Since the passing of the first Bankruptcy Act in 1919, there has been only one office of Registrar in Bankruptcy for Ontario. This has proved satisfactory, and provides for one office of record for bankruptcy, where the records of every bankruptcy throughout Ontario are readily available. It also maintains uniformity of practice.

Section 160 of the new Act provides that the Local Registrars of the Supreme Court, 47 in number, shall be Registrars in Bankruptcy. The judicial powers of the Registrar shall be exercised by the Master of the Court, but where there is no Master, by the Registrar if he is a duly qualified member of the legal profession; otherwise, by a Judge of the County or District Court within the judicial district.

There is no power in the present Bankruptcy Act to appoint additional registrars in Bankruptcy if necessary.

ADVANTAGES OF THE ADMINISTRATION UNDER THE PRESENT ACT

Uniformity of Practice.

It has always been the practice for one judge to hear all bankruptcy matters. Under the new Act all Supreme Court judges would be required to sit in bankruptcy. In the case of opposed petitions and other urgent matters, in most places no judge would be available to hear such applications except at the regular sittings. As bankruptcy is a special branch of the law in Canada, it is important that the practice should be uniform and the decisions consistent.

Advantage of having only one Office of Record

It is in the public interest that there should be one office of record for the whole province, as at present, where records of every bankruptcy in Ontario

since The Bankruptcy Act came into effect in 1920 are available. The only complete records of all such bankruptcies in Ontario are in the office of the Registrar in Bankruptcy at Toronto.

In the offices of the Local Registrars of the Supreme Court are made office of record for bankruptcy, it will be necessary to search in all such offices, about 47 in number, to find out whether a person is bankrupt. (Apart from searching in *The Canada Gazette*.)

Petitions against the same debtor might be filed in several offices throughout the province contemporaneously, which would lead to confusion.

Even after the discharge of the trustee and the debtor, the public are continually searching the records of the court, sometimes for years back, particularly where questions of title to property are involved.

Bankruptcy business is not heavy at the present time. Although there were approximately 1,000 bankruptcies in 1932, it was not considered necessary to appoint additional Registrars then.

3. Powers of Registrar in Bankruptcy

The Registrar in Bankruptcy is given wide powers under the Act—to make receiving orders when unopposed, to hear all unopposed and ex parte applications, to make interim orders, to hear appeals in certain cases, etc. The jurisdiction of the Registrar has not yet been clearly defined, and must be carefully exercised.

There is already power vested in the Chief Justice of the Province to assign Registrars in Bankruptcy, and prescribe or limit the territorial jurisdiction of any such Registrar under section 157.

4. Necessity for Careful Supervision by the Court

It is important that expenses of administration should be carefully checked and that trustees' disbursements and remuneration be approved, and solicitors' bills be taxed.

The proper place for passing accounts is in the Courts, where the records are readily available to everyone, creditors, debtors, trustees etc., and where they may attend on the passing of the accounts, with the usual rights of appeal. This has always been the practice of the court, as in the case of accounts of trustees, liquidators, receivers, executors, committees, etc.

5. Matters Dealt With Outside Toronto

Under the present Bankruptcy Act, the following steps in the administration of a bankrupt estate take place without the necessity of an application to the court at Toronto:—

- (a) Voluntary assignments in bankruptcy are filed with the Official Receiver in the locality of the debtor, and there are 16 Official Receivers in the various parts of the province.
- (b) Power is given to the Official Receivers to direct disposal of perishable goods, hold meetings of creditors, fix bonds of trustees, etc.
- (c) Trustees are appointed at the meetings of creditors held in the locality of the debtor, and such trustees immediately proceed to administer the estates. Claims are settled by the trustees and inspectors without application to the court, except when there is an appeal from their decision.
- (d) Trustees can apply personally for their discharge. In a great many estates in which the authorized assignments are made outside Toronto, the only applications made to the court at Toronto are for discharge of trustee and debtor, and for the taxation of solicitors' bills.

Issues may be Tried Outside Toronto

For the convenience of parties outside Toronto, the judge may direct an issue or a reference before any judge or officer of the court in any part of the province under section 171. This section has been resorted to in many cases, like *Re Bozanich*, 23 C.B.R. 234, and more recently in the case of *Paul Croteau*, where the contest of the claims of over 100 wage-earners was referred to the District Court Judge at Cochrane.

Trustees have very wide Powers under Section 43

In the administration of bankrupt estates, the trustee with the consent in writing of the inspectors can perform many acts in the locality of the debtor without recourse to the courts. Some of these are selling, mortgaging or leasing property at will, carrying on business, bringing or defending actions concerning the debtor's property, compromising debts freely, making general compromises, and dividing assets in specie as well as the ordinary division.

Trade Creditors

As trade creditors are usually manufacturers and producers, they are located in all parts of the province, and often outside the province, and Toronto is a very convenient centre for applications to the Court.

With regard to the decentralization of the Courts, the Superintendent says in his memorandum on page 15 of the Minutes of Evidence before the Senate on May 22, 1946, that The Bankruptcy Act "should be dealt with in the same way" as the Winding Up Act.

The Bankruptcy Act is different from the Winding Up Act, in that the administration under The Bankruptcy Act is by the creditors acting through a trustee and inspectors who can complete the administration to a large extent without coming to the Court. Under the Winding Up Act the administration is entirely subject to the direction and supervision of the Court, either directly by a Judge exercising the jurisdiction of the Court, or by an Officer of the Court to whom the matter is referred or directed, and this Officer is a Judicial Officer. Nothing is implemented under the Winding Up Act without the intervention of the Court.

DISCHARGE OF BANKRUPTS (section 146 et seq.)

Section 146 dealing with the discharge of the bankrupt would prove most satisfactory. It shifts the onus of making the application for discharge from the debtor to the trustee. This section is apparently an attempt to provide "an automatic procedure" for the discharge of the bankrupt. The Superintendent in his note to the section states that this procedure has been taken from the American Bankruptcy Act, and reference is made to section 14 of the Amendment to the Bankruptcy Act of the United States as approved on the 2nd of June, 1939. In 1943 I was consulted as Bankruptcy Judge by American authorities in Washington as to the Canadian procedure on discharges of bankrupts, and I understood that the American procedure was not satisfactory and was to be amended. I understand that a Bill to amend the American Bankruptcy Act is now before Congress.

The provision in the American Act for "an automatic procedure" for discharge of bankrupt is not so serious in its consequences as such a procedure could be in Canada, as, unlike the Canadian Act, the American Act has no provision for making the after-acquired property of the bankrupt available for distribution among his creditors, except that "all property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance, shall vest in the trustee." See section 23 (a) of the present Canadian Act.

retained as section 25 (a) in the New Act, for the definition of "property the debtor" which includes:—

all property which may be acquired by or devolve on him before his discharge.

Also, the American Act does not provide for conditional discharges bankrupts.

The present procedure is to be preferred. The bankrupt makes a special application for his discharge, and this places the responsibility on the bankrupt of satisfying the court as to his conduct and that he is entitled to his discharge. This has been the practice under the Canadian Act since it was first passed in 1919 and it has always proved satisfactory. It is based on the practice under the English Act, which has been found satisfactory through many years of experience.

The onus of applying for the discharge of the bankrupt should not be put on the trustee, as section 146 (2) provides. In many cases debtors not intending to apply immediately for their discharge might neglect to notify the trustee under section 146 (1) that they do not wish to apply for their discharge, yet the trustee is required to proceed with the application under this section. Apparently the costs of such an application would have to be paid out of the estate at the expense of the creditors, or personally by the trustee until he was reimbursed by the debtor under section 158 (5).

Section 146 (2) provides that the trustee shall apply to the court for an appointment for the discharge of the bankrupt *not later than six months following the bankruptcy*. In many cases the administration of the estate would not have progressed to the point where it would be possible for the trustee to make the prescribed report to the Court showing the realization of the estate, and the affairs of the debtor have been fully investigated, and it would be necessary for the trustee to oppose the application on these grounds.

The wording of the first 2 lines of section 146 (1) is defective.

In section 146 (4) the notices should be restricted to creditors who have proved their claims. Creditors who have not proved have no status in the bankruptcy under well recognized decisions.

Section 147 does not provide for a report on bankruptcy offences.

Section 147 (3 and 4) provides for reports to the Court by the trustee and the Superintendent. Sub-section 9 makes these reports *prima facie* evidence of the statements contained in them. Sub-section 11 provides that the bankrupt may be required to attend in person and give evidence. There is no provision whatever permitting the bankrupt to dispute the Superintendent's report. Even if this right were given, it would not be practical for the Superintendent to appear in person in courts throughout Canada to give evidence in explanation of his report and be cross-examined on the same, which is a right to which every debtor is entitled under the law.

JURISDICTION OF THE COURT

Section 159 (1) (a) provides that the court shall have power and jurisdiction to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person.

See the explanatory note to this section:—

The object of the supplementary jurisdiction herein conferred is to have all matters or disputes disposed of by the court exercising bankruptcy jurisdiction. Heretofore the trustees might be obliged to take proceedings in other courts and he might also be proceeded against in other courts.

Under this section, the bankruptcy court would be required to try and determine matters which involve strangers to the bankruptcy, and which are not proper matters to be dealt with by the Bankruptcy Court. For example, where the trustee is suing to recover book debts, or other property belonging to the debtor; and where the trustee is being sued for goods supplied during his administration of the estate. These are matters which should be determined by the ordinary courts, some of them by courts of inferior jurisdiction. From the wording of the section it would appear that even matters ordinarily brought to the Division Courts must be brought in the Bankruptcy Court with the increased scale of costs, thus not keeping costs under better control as stated in the explanatory note.

The present practice was settled by the decision in *re Reynolds*, Ex parte Thistle, 10 C.B.R. 127, in which it was stated by Fisher, J. at page 131:—

I think it is quite clear on the material filed by the trustee that Thistle is a stranger to the estate that is now being administered in bankruptcy and that there is no jurisdiction to bring him in and compel him to submit his rights, whatever they may be, to be determined by the Bankruptcy Court.

This decision was affirmed by the Court of Appeal, and follows the leading English case of *Ellis v. Silber*, (1873) L.R. 8 Ch. 83, in which it was stated at page 86:—

That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors, as the parties to the administration in bankruptcy, are subject to that jurisdiction. The trustees or assignees, as the persons entrusted with that administration, are subject to that jurisdiction. The assets which come to their hands and the mode of administering them are subject to that jurisdiction; and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition, that whenever the assignees or trustees in bankruptcy or the trustees under such deeds as these have a demand at law or in equity as against a stranger to the bankruptcy, then that that demand is to be prosecuted in the Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige whatever of authority.

Under section 159 (1) (e), in order to bring any proceeding involving a bankrupt estate in any other court, it would be necessary in all cases to obtain the leave of the Bankruptcy Court.

PROCEDURE WITH REGARD TO BANKRUPTCY OFFENCES

I have discussed some features of the new Section 159 (1). There is, however, one sub-section to which I particularly take objection as Bankruptcy Judge. That is sub-section (1) (f) which gives the Court power and jurisdiction to arraign, admit to bail, try and punish offenders for offences committed under this Act.

Section 159 (1) provides that in the Province of Ontario the High Court of Justice Division of the Supreme Court of the Province is invested in law and in equity with original, auxiliary, ancillary and plenary jurisdiction in bankruptcy and in all matters or proceedings authorized by or under the Act during their respective terms as they are now or may be hereafter held and in

vacation and in chambers and supplementary thereto shall have power and jurisdiction to arraign, admit to bail, try and punish offenders for offence committed under this Act.

Under the provisions of section 160 (1) the jurisdiction vested in the High Court of Justice shall be exercised in the same manner as the jurisdiction of the Court as exercised ordinarily within the judicial districts established by the Province of Ontario or otherwise for the administration of civil law.

Section 161 provides that the Chief Justice of the Court may nominate or assign one or more of the Judges of the Court ordinarily to exercise the judicial powers and jurisdiction conferred by the Act which may be exercised by a single Judge, provided that nothing in this section shall diminish or affect the powers of jurisdiction of the Court or of any of the Judges thereof not specially nominated or assigned.

Section 200 provides that any bankrupt shall in each of the cases set out be guilty of an indictable offence and liable to a fine not exceeding \$1,000 or to a term not exceeding two years' imprisonment who commits any one of twenty-one named offences.

The notes to *Section 159* state that the object of the supplementary jurisdiction conferred under *Section 159* is to have *all matters or disputes disposed of by the Court exercising bankruptcy jurisdiction*. In reference to *Section 159 (f)* the note says:—

The most unsatisfactory phase of bankruptcy administration relates to the punishment for offences enumerated in the Act. Experience indicates that in so many cases magistrates and judges of inferior courts do not fully appreciate the significance of the offences as related to commercial morality with the result that creditors at large are almost thoroughly discouraged by reason of the failure to obtain proper and sufficient penalties for offences committed.

The note goes on to say:—

If offenders were brought before a Judge more familiar with the relative importance of such offences, punishment meted out would be more consistent and more nearly related to the nature of the offence.

It is further explained in the note that exception may be taken that offender would hereby be deprived of their rights under the ordinary criminal procedure but that it need only be remembered that this authority is not being exercised by some extraneous or incompetent authority but by a Judge of the highest trial Court in any Province through whom it is to be assumed justice will be best administered.

The proposed legislation is not only objectionable in form, but in practice it would be most difficult to work out even if it were in form to carry out the suggestion in the explanatory note. I deal with the form of the legislation first.

Section 200 creates 21 indictable offences. The procedure in respect to the trial of indictable offences is set out in the Criminal Code. The Supreme Court of Ontario has now jurisdiction to try all indictable offences and unless the legislation explicitly takes from the Supreme Court of Ontario that jurisdiction, it would continue to have such jurisdiction.

Under Part 9 of the Criminal Code, a Court of General Sessions of the Peace in Ontario has power to try all indictable offences except those mentioned in Section 583 of the Criminal Code which include offences such as treason, murder, manslaughter, rape, corruption of public officers, criminal libel, combinations in restraint of trade, etc. Except for special statutory provision, all indictable offences are tried by a jury. Under Part 18 of the Criminal Code the accused has a right to elect to be tried before the County Judge's Criminal Court for any offence triable before the Court of General Sessions of the Peace, and upon such election the County Judge is required to try him without a jury. Under Part

16 of the Criminal Code, the accused has likewise a right to elect to be tried before a Police Magistrate when charged with any offence triable before the General Sessions of the Peace. In such case the Police Magistrate may accept the election or commit the accused for trial.

Where an accused person is charged with an indictable offence there are only two methods of getting him before the Courts—(a) to proceed by way of information before a Magistrate or Justice of the Peace and obtain a warrant or a summons; (b) to prefer an indictment before the Grand Jury and apply for a bench warrant.

In the light of the defined criminal procedure in Canada, let us now look at the provisions of the proposed Bankruptcy Act.

Section 159 (1) (f) gives to the High Court of Justice of Ontario during the terms of sitting and in vacation and in Chambers power and jurisdiction to arraign, admit to bail, try, and punish offenders for offences committed under this Act. Is it intended that a Judge shall have power to try an offender without a jury against his will? The Act does not say so, nor does it say that all rights of trial by jury are to be taken away although that is the suggestion in the explanatory note. However, *section 160* says that the jurisdiction vested in the Court shall be exercised in the same manner as the jurisdiction of the Court is exercised in the administration of civil law. This brings one to a dead end. How can jurisdiction to try and punish offenders be exercised in the same manner as jurisdiction to administer the civil law? There is only one offence in the Criminal Code in which it is provided that a Supreme Court Judge has jurisdiction to try an offender without a jury, and that is under the provisions of *section 598* of the Criminal Code dealing with trade conspiracies. If it is intended to deprive the offender of all rights to trial by jury, I would think it would be necessary to explicitly say so in the legislation.

Section 161 provides that the Chief Justice may nominate or assign one of the Judges of the Court ordinarily to exercise the Judicial powers and jurisdiction conferred by the Act which may be exercised by a single Judge. It is difficult to consider this section as related to the trial and punishment of offenders. If a Judge in Bankruptcy is assigned, is it contemplated that he shall try and punish all offenders throughout Ontario?

Now may I deal with some of the practical difficulties.

If the legislation should be so framed as to confer on Supreme Court Judges the exclusive right to arraign, admit to bail, try, and punish offenders for the offences committed under the Act, it is undoubtedly going to create great confusion in the administration of justice in Ontario. The sittings of the Supreme Court are held at certain specified times throughout Ontario. Except in those cases where the accused person is in custody, only those cases coming within the compulsory jurisdiction of the Supreme Court are tried before a Supreme Court Judge, except in some unusual cases. It is submitted that it would unduly burden the trial Courts if Supreme Court Judges are to be required to try all the offences enumerated in *Section 200* of the proposed Act, none of which carries a punishment of more than two years' imprisonment. The inconsistency of this legislation is quite apparent. The County Court Judges and Magistrates now have jurisdiction to try accused persons for offences for which they may be sentenced to jail for life and to be whipped. Surely judicial officers who have such jurisdiction are competent to try bankruptcy offences. If however, serious offences occur that it is thought in the public interest should be tried in the Supreme Court, it is always open to the Attorney-General to lay an indictment in the Supreme Court and have them tried before a Supreme Court Judge and a jury.

It is submitted that the reasons for attempting to confer this special jurisdiction on the Supreme Court Judge are not sound. In the first place, it is stated that there has been a failure to obtain proper and sufficient penalties

for offences committed. There is always a right of appeal vested in the Crown in criminal cases upon obtaining leave of a Judge of the Court of Appeal to appeal against the insufficiency of the sentence. If in the past the Crown has not appealed or has appealed and the appeal has been dismissed, it may be assumed that the contention advanced in the note in support of this drastic legislation is not well founded. It is also suggested that if the offenders were brought before a Judge more familiar with the relative importance of such offences, punishment meted out would be more consistent and more nearly related to the nature of the offence. I would suggest that if proper relief cannot be got from the Court of Appeal in an appeal against sentence, there is no assurance that Supreme Court Judges would give sentences more satisfactory to the creditors of the accused.

In answer to the exception that offenders would be deprived of their rights under ordinary criminal procedure, it is stated that it is to be remembered that the authority is not to be exercised by some extraneous or incompetent authority, but by a Judge of the highest Trial Court. Such a statement might be made in justification of taking away all an accused's rights to trial by jury for any offence whatsoever. While it is purely a matter for legislative consideration, and not for judicial consideration, it is respectfully pointed out that such a step would be new in the administration of the criminal law, as there is no precedent for depriving an accused person charged with an indictable offence of his right to a trial by jury, except on his own election.

May I refer briefly to two or three other sections of this Bill.

Section 92 (1). Any equities of redemption in real property should not automatically vest in the mortgagees. It frequently happens that real estate which would be difficult to sell at the time of the bankruptcy increases in value and later becomes saleable. The mortgagees should be left to their usual remedies.

Section 92 (2). This is highly objectionable. No assets of the debtor should be revested in him until his creditors are paid in full, except under the composition sections of the Act and with the approval of the Court.

Section 92 (3). All documents of title, etc., should be held by the trustee, subject to the rules and the direction of the Court.

Section 92 (5). Any directions as contemplated by this sub-section should be given by the Court.

In my opinion, the whole of section 92, except sub-section 4, is highly objectionable.

Section 53 (1) (line 41) provides:—

...the trustee may waive the filing of a proof of claim if fully satisfied that a claimant is legally entitled to recover possession of any such property or of any right or interest therein.

In all cases, creditors or persons claiming goods in the possession of the bankrupt should file a proof of claim verified by affidavit.

Section 110 (2) and note to same. Notwithstanding section 125, all proofs of claim should be verified by affidavit, following the regular practice of the Court, by which evidence is required to be under oath, and evidence upon a motion may be given by affidavit. The proof of claim as filed by the creditor is used in determining his claim against the estate. Proceedings under the Income War Tax Act and the Succession Duty Act are not Court proceedings in the same way as bankruptcy proceedings are.

Section 196. This provides for summary administration of estates by the Official Receiver where there are no assets, or insufficient assets to cover the

costs of administration. The Official Receiver must carry out the duties under this section in all such estates. These duties would involve considerable disbursements. There appears to be no adequate provisions in section 198 for providing funds for such purposes.

Section 9 (3) provides that in the case of an assignment by a corporation, the sworn statement of affairs which must accompany the assignment shall include (line 30):—

a list of the shareholders showing the number of shares of stock subscribed for by each shareholder and the amount of capital paid up by each such shareholder.

In some cases this information would be very difficult to obtain, which would unduly delay the filing of the assignment, sometimes with serious consequences.

APPENDIX B

BRIEF PRESENTED TO THE SENATE COMMITTEE ON BANKING AND COMMERCE RESPECTING BILL A5 "AN ACT RESPECTING BANKRUPTCY" ON BEHALF OF THE DOMINION MORTGAGE AND INVESTMENTS ASSOCIATION.

June 20, 1946.

Mr. Chairman and Honourable Senators:

The Dominion Mortgage and Investments Association is an organization composed of loan companies, trust companies and life insurance companies to discuss and deal with matters of common interest to those groups of companies in regard to their investments. While it does not include all such companies, its membership represents the major portion of the business in Canada. The members of the Association are large investors in the securities of corporations and as such are very much interested in the provisions of Bill A5, respecting bankruptcy, and generally in the reorganization of corporations in financial difficulties.

The purpose of Part II of the Bill appears to be to bring under this part of the Bankruptcy Act all corporate reorganizations or arrangements between a company and its creditors. In particular the intention seems to be to abrogate the provisions of The Companies' Creditors Arrangement Act, although this Act is not specifically repealed.

The Association believes that any such attempt is unsound in principle and probably unworkable in practice. The position of investors in a corporation, whether as bondholders, debenture holders or the holders of preferred or common shares, is very different from that of ordinary trade creditors. A procedure quite appropriate for adjusting the rights of investors may therefore be quite inappropriate as a method of dealing with the claims of trade creditors and vice versa. Reorganization is really the converse of bankruptcy and it is quite natural for them to be dealt with in different statutes. In Great Britain company reorganizations are dealt with under The Companies Act and not under the Bankruptcy Act.

The Companies' Creditors Arrangement Act was passed to facilitate corporate reorganizations and, broadly speaking, imported into the law of Canada the relevant provisions of the British Companies Act. The principle of these Acts is reorganization by consent of the various classes of security holders affected and the purpose is carried out by permitting meetings to be held after which the wishes of a specified majority can be given effect to where it is impracticable to obtain the unanimous consent of all the members of a class. Under these provisions a great many important companies have been satisfactorily reorganized both here and in the United Kingdom.

From the point of view of investors the procedure under The Companies' Creditors Arrangement Act has worked well on the whole and has given general satisfaction. The investing public has a variety of instruments to protect its interest such as trustees for bondholders, large institutional investors, underwriters, etc., and the intervention of these groups has probably served to prevent any serious abuse. Nevertheless it is recognized that abuses did occur in the past under The Companies' Creditors Arrangement Act procedure in the compromise of the rights of ordinary trade creditors where there was no general public investment interest.

The Association believes therefore that—

1. The Companies' Creditors Arrangement Act should be retained in full force and effect but with such amendments as may be necessary to prevent the

kind of abuses that occurred in the past and to ensure that so far as small trading companies are concerned recourse will be had to The Bankruptcy Act for the purpose of effecting compositions.

2. The Bankruptcy Act should be amended so that its composition provision will be made available in pre-bankruptcy situations and to permit the compromise of the claims of unsecured trade creditors prior to bankruptcy in a manner similar to the procedure now available after bankruptcy. This would not involve any interference with the rights of secured creditors and could be provided for in a manner much simpler than the elaborate phraseology of the proposed Part II of the Bill, although some of the provisions of Part II might be usefully included.

As indicative of the amendments of The Companies' Creditors Arrangement Act which the Association believes would be suitable to prevent the recurrence of abuses of the kind that have occurred in the past, there is submitted herewith a draft Bill embodying certain proposed amendments to The Companies' Creditors Arrangement Act and the Association has the following comments to make by way of explanation of the suggested amendments. In short, the proposals involve the addition to the Act of new Parts IV and V providing for a preliminary hearing on the initial application to the Judge for an Order directing meetings to be summoned, the incorporation of detailed provisions in respect of procedure and other matters incidental to the submission of a plan for the consideration of creditors and the subsequent proceedings. These suggestions are discussed in detail below.

It might be suggested that some of the provisions contained in the proposed Parts IV and V could be embodied in General Rules which could be made under Section 17 of the existing Act; however, certain provisions which in one aspect might be considered as involving only matters of procedure in another aspect might be considered as involving matters of substantive law and must therefore be embodied in the Amending Act itself. Moreover, the Association considers it advisable from the point of view of correcting the abuses which have undoubtedly arisen in the administration of the Act and the desirability of laying out a detailed and standardized procedure that the suggested amendments should be incorporated in the Act itself.

The following is an outline of the procedure to be followed under the Act after giving effect to the proposed amendments.

1. The first step is the filing with the court of a copy of the plan and any relevant material on the application for an order directing the summoning of meetings.

2. A preliminary hearing is then directed at which any objections to the plan may be discussed. If the objections are so substantial that it appears that the plan cannot obtain the requisite approvals, the court may dismiss the application; otherwise meetings will be directed to be summoned to consider the plan, either as submitted or as altered or modified to meet any objections.

3. If the plan does not receive the requisite favourable votes that will be an end of the matter. If on the other hand the plan receives the requisite votes an application will be made to the court to sanction the plan. If the plan is sanctioned, it becomes binding.

4. If at a meeting of any class of creditors any amendment to the proposal is made that substantially and adversely affects the interests of any class of creditors, the meeting must adjourn and the Chairman apply to the court for directions as to the notice, etc., of such adjourned meeting.

The only radical departure from the established practice is the provision for a preliminary hearing.

We have the following specific comments to make on the proposed amendments. The references are to the section numbers of the proposed Amending Act and the new Parts proposed to be added.

Section 2—This section adds new Parts IV and V, assigning section numbers which continue after the last section (20) of the Act.

PART IV

21. Under the existing practice it is possible and sometimes happens that secured creditors who may be vitally affected by a plan hear nothing about it until they receive the notice of meeting. This section makes it requisite that at least representatives of all classes concerned receive notice of the plan proposed and be given an opportunity on adequate information to attend and raise any objections they may have to the proposals before the meetings are actually summoned.

22. Upon the preliminary hearing the court is to hear objections.

23. Adjournments of the preliminary hearing may be ordered.

24. If no objections are raised at the preliminary hearing, the proceedings will be of a formal nature and the court will order the summoning of meetings.

25. If, on the other hand, the objections taken on the preliminary hearing are substantial and it appears that the plan will be successfully opposed, the court may dismiss the application. Thus the expense of holding meetings at which the plan is certain to be defeated is obviated. An order dismissing the application is subject to appeal.

26. This section is designed to prevent several plans being put forward by different creditors of the same class.

27. Where the compromise requires the transfer of the assets to a new company, the debtor company might refuse to execute the requisite conveyances. The court is authorized to make an order vesting the assets in the new company.

PART V

28. It has been found that meetings are sometimes called without adequate information being furnished to the creditors attending or that the notice is insufficient or that the chairman is not always a person who will see that the meetings are fairly conducted.

29, 30 & 31. There have sometimes been abuses in the solicitation of instruments of proxy by irresponsible persons or by persons having a special interest which is not disclosed. These sections are designed to secure the necessary disclosure in the solicitation of instruments of proxy.

32. This section specifies the procedure to be followed at meetings. These provisions are designed to remove difficulties to which creditors are now subjected under existing practice.

Subsection (3) supplements the procedure available under section 11 of the Act, which is inadequate.

Subsections (4) and (5) are designed to prevent a radically changed plan from being voted on and approved with the use of instruments of proxy given pursuant to notice of a meeting called to consider the plan as originally proposed.

33. The Act does not now require notice to dissentients of the application to the court to sanction the plan. This section adopts the corresponding provisions of The Companies Act, 1934.

34 & 35. In some cases the preparation and carrying into effect of a plan of reorganization will involve substantial expenses. It has been thought desirable to adopt provisions which will make such expenses subject to review by the court and also to adopt provisions so that in a proper case expenses may be incurred and payment thereof provided for notwithstanding that the plan may eventually

not become effective. At the same time it has been thought desirable to give specific directions to the court to disallow excessive costs or any costs at all to interests not entitled to costs.

36. This section is desirable so that there may be no doubt as to the power of the court to require production of records or information which may be in the possession or control of a person who is not a direct party to the proceedings.

37. If orders of an interlocutory nature are subject to appeal the reorganization may be unduly delayed. On the other hand there must of necessity be provision for appeal where the rights of parties are finally disposed of. Accordingly, a distinction is drawn between orders which are to be appealable and those which are not to be appealable. The orders which it is considered should not be subject to appeal are those directing the holding of meetings (sections 3 and 4 of the Act and new Section 28); orders with respect to the procedure on the preliminary hearing (new sections 21-24 inclusive); vesting orders (new section 27); orders giving directions in connection with adjournments (subsections (4) and (5) of new section 32); orders directing notice to dissentients (new section 33); and orders with regard to expenses of the plan (new section 34); orders directing production (new section 36).

38. Provision is made for the making of orders directing that meetings be either proceeded with or adjourned pending appeal. Such orders are not to be subject to appeal.

39. It has been found that in some cases trading companies have put forward a plan which resulted in cutting down the claims of creditors without any real intention of carrying out such plan. Later on, after new creditors' claims have been created, a new plan is proposed, when former creditors are at a disadvantage as against new creditors because their original claims have already been reduced. The new section puts an obstacle in the way of this practice by preventing the debtor company itself from submitting a new proposal during a two-year interval.

40. The requirement that a copy of the order sanctioning the plan and a copy of the plan itself should be forwarded to the Dominion Statistician is along the lines of the similar requirements in the Winding-up Act.

Section 3—This section provides that the Amending Act is not to affect pending proceedings.

The Association has given consideration to the provisions of Part II of Bill A5 and submits that the provisions of the said Part are not suitable for effecting a reorganization of a large public company with issues of bonds and shares largely distributed in the hands of the public. The securities and shares of such companies are usually distributed through one or more houses of investment dealers and in most cases substantial amounts of the securities and shares are held by life insurance companies, investment trusts, trust companies and similar institutions. The proceedings for reorganization of such a company are usually initiated by representatives of the issuing houses and institutional holders either through the creation of protective committees on behalf of bond and share holders or through informal discussions between representatives of the chief security holders, issuing houses, representatives of the trustee for the bondholders and the directors of the company. The negotiations leading to the formulation of a plan of reorganization are usually extended and involve extensive and minute investigation of the affairs of the company in question. The provisions of Part II of Bill A5 require the commencement of proceedings for reorganization by the submission of the plan of reorganization to a licensed trustee who is thereupon required to make an investigation of the affairs of the

company concerned. In the cases of companies such as those under discussion, such an investigation would in most cases be entirely superfluous, because of the work already done by the committees or other persons negotiating the plan, and such a superfluous investigation would necessarily entail a considerable overlapping of work and in most cases considerable unnecessary expense. Moreover, when negotiations with the various classes of investors have reached the point when a plan of reorganization can be formally prepared, the carrying through of the plan is often a matter of great urgency in the interests of all concerned. The Provisions of the proposed Part II contemplating successive investigations at various stages of the proceedings might easily lead to delays resulting in the abandonment of even the most advantageous plan.

One of the basic principles of the existing Bankruptcy Act is the preservation of the rights of secured creditors. Part II of the Bill contemplates that the rights of such creditors can be compromised by means of the procedure defined therein. Such procedure, however, is quite inappropriate to the purpose as is shown by the provisions of the proposed section 104 which requires a secured creditor to value his security before becoming entitled to vote at any meeting. No effective meeting of secured creditors such as bondholders could therefore be held and no reorganization of a company with bonds outstanding could be made under Part II without extensive amendments to procedure and in particular to section 104. No such amendments are recommended, as in the opinion of the Association the existing provisions of the Bankruptcy Act preserving the rights of secured creditors should be left undisturbed.

Although the above are the basic objections of the Association to the use of proceedings under the Bankruptcy Act for the purpose of adjusting the rights of investors on the reorganization of a public company, the Association without examining all of the provisions of Part II of Bill A5 in detail wishes to point out the following among other respects in which the Bill as drawn is unsuitable for use in such reorganizations:—

(a) Section 12 (1) (c) requires a trustee in calling a meeting to forward to all of the creditors a list of the creditors affected by the proposal with their addresses and the amounts of their claims as known or as shown by the company's books, and subsection (2) requires that in the case of a corporation the trustee shall send to each shareholder, bondholder and debenture holder affected by the proposal the documents referred to in subsection (1), and in addition on request a list of such share, bond or debenture holders, showing in the case of shareholders the number of shares of stock subscribed for by each shareholder with the unpaid balance, if any, due thereon, and in the case of bond or debenture holders the serial number of the bonds or debentures held by each of them with the amount of principal and interest to be shown separately due thereon.

In the first place most issues of bonds or debentures of large public companies in Canada are in bearer form and it is utterly impossible to prepare a list of such bondholders. In many cases shares are held in the form of share warrants, in which case the same remarks apply to the list of shareholders.

Secondly, the preparation of lists of bond and share holders, if it were possible, and the distribution of such lists to any person requesting them, would in the case of many of the public companies whose bonds and shares are widely distributed and held by several thousand individuals involve an expense entirely out of proportion to any benefit to be derived therefrom.

(b) As mentioned above, reorganizations of large public companies are usually initiated through formal or informal committees of security

holders and the reports of such committees appear to the Association to be of greater value to the security holders than any material required to be furnished under the provisions of Section 12 of Bill A5.

(c) Section 22 of Bill A5 appears to us to raise difficult constitutional questions in so far as it relates to corporations incorporated otherwise than by or under an Act of the Parliament of Canada.

(d) The Association has grave doubts as to the wisdom of the provisions of Section 23 of Bill A5 enabling the court to appoint a committee to propound a scheme of reorganization where for one reason or another it has been found impossible to effect a reorganization in the ordinary course. It seems to the Association that instead of being useful in assisting the exceptional reorganization where an agreement could not be effected, it would tend to render other reorganizations more difficult in that classes of security holders or share holders would be inclined to refuse to approve of a reorganization which did not particularly favour their class with a view to the appointment of a committee on which they would be represented and which they would hope would provide more favourable treatment.

As intimated above, the foregoing comments are not intended to be an exhaustive criticism of the provisions of Part II of Bill A5, but merely indicate some of the outstanding points which render the draft Bill unsuitable for the reorganization of a large public company.

The Association understands that some suggestion has been made that the Winding-up Act should be repealed and that all the matters which would have come under that Act should be dealt with under the Bankruptcy Act. While the Association is not in a position to compare the provisions of the two Acts, it has been our experience that large public companies which are in financial difficulties are nearly always dealt with under the Winding Up Act and proceedings under that Act are to our knowledge well suited for coordination with receivership actions under Trust Deeds securing bonds and proceedings under the Companies' Creditors Arrangement Act. The Association doubts whether such proceedings could be as satisfactorily combined with proceedings under the Bankruptcy Act and submits that most careful consideration should be given before the Winding-up Act is repealed.

Respectfully submitted,

THE DOMINION MORTGAGE & INVESTMENTS ASSOCIATION.

J. E. Fortin,
Secretary-Treasurer.

DRAFT BILL submitted by the Dominion Mortgage and Investments Association in its Brief presented to the Senate Committee on Banking and Commerce respecting Bill A5 "An Act Respecting Bankruptcy," June 20, 1946.

AN ACT TO AMEND THE COMPANIES' CREDITORS ARRANGEMENT ACT, 1933

BILL

1933, c.36

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title

1. This Act may be cited as The Companies' Creditors Arrangement Act Amendment Act, 1946.

2. The said Act is hereby amended by adding thereto the following:—

PART IV

Duties of court on application under sections three and four

21. Upon the application to the court under sections three or four the court

Material to be filed

(1) shall require to be filed with it a copy of the compromise or arrangement with respect to which the application is made; a statement, verified by affidavit, setting forth the circumstances under which and the person or persons by whom the compromise or arrangement has been prepared, particulars as to the class or classes of creditors and shareholders and other persons (if any) consulted in the preparation thereof, and, unless the court otherwise orders, copies verified as being true copies of all financial statements, appraisals, reports and other material documents referred to in the compromise or arrangement;

Preliminary hearing

(2) shall direct a preliminary hearing (hereinafter referred to as the "preliminary hearing") for the consideration of the application, and shall fix the date, time and place for the preliminary hearing;

Statement to be filed

(3) shall require the filing with the court of a statement as of such date and verified in such manner as the court may prescribe, showing the creditors or classes of creditors, as the case may be, affected by the compromise or arrangement proposed, with the name and last known address of each such creditor as shown by the books of the debtor company and the amount of his claim stating whether such claim is secured or unsecured, in whole or in part (and if secured the nature of the security), provided that, in the case of claims represented by securities or obligations payable to bearer, a description of the securities or obligations with particulars of the aggregate amount, the rate of interest and the nature of the security, if any, shall be sufficient and provided further that, if the application is made by a creditor of the debtor company, the court may dispense, in whole or in part, with the requirements of this subsection;

Notice of preliminary hearing

(4) shall prescribe the form and period of notice of the preliminary hearing to be given, the persons to whom such notice shall be given, the manner of giving notice, the material to accompany such notice and the place or places where copies of such material may be obtained by any person to whom notice by advertising is directed.

Notice to others than creditors or shareholders

(5) may direct notice of the preliminary hearing to be given to any person who may be the beneficial owner of or may be otherwise interested in any claim against or share in the capital stock of the debtor company;

Preliminary hearing requisite before summoning of meetings

(6) Notwithstanding sections three or four shall not order any meeting or meetings to be summoned until the preliminary hearing shall have been concluded.

Objections

22. Upon the preliminary hearing the court shall hear any objections taken to the compromise or arrangement as proposed, may permit alterations or

modifications, may take evidence and may direct the preparation and filing with the court of such reports, financial statements, appraisals or other data as the court may deem requisite for the purposes of the preliminary hearing.

Adjournment

23. The court may direct the adjournment, from time to time, of the preliminary hearing without further notice or may direct the giving of notice of such adjourned preliminary hearing, not only to the persons to whom notice was directed to be given pursuant to section twenty-one but also to others.

Summoning of meetings

24. If no objections are sustained at the preliminary hearing to the compromise or arrangement proposed, then the court may order a meeting or meetings to be summoned, as permitted by sections three or four or both sections, as the case may be, for the consideration of the compromise or arrangement. Any such meeting may be ordered to be held at some place outside of Canada if the court, in its discretion, determines that, having regard to all the circumstances, such meeting should or may more conveniently be held at such place.

Dismissal of application

25. If, on the preliminary hearing, the court shall determine that a compromise or arrangement, to which objection has been taken, is not practicable or that such objections are so substantial that no meeting or meetings should be ordered to be summoned, the court may make an order dismissing the application. Such order shall not preclude or prejudice any future application under sections three or four.

Restriction on applications by creditors of the same class

26. Where an application has been made by a creditor under sections three or four no application may be made to any court by any other creditor of the same class for an order directing the summoning of a meeting or meetings in respect of any other or an amended compromise or arrangement unless the first mentioned application shall have been dismissed.

Vesting order

27. Where a compromise or arrangement provides for the transfer of the assets and undertaking (or any part thereof) of the debtor company to a transferee, then the court may, upon sanction by it of the compromise or arrangement under section five, make such vesting order or orders or may direct such conveyances and transfers to be made as shall be requisite for such purpose.

PART V

28. Upon the making of an order under sections three or four

(1) the order for the summoning of the meeting of creditors or classes of creditors and of shareholders or classes of shareholders (if the court directs a meeting or meetings of the shareholders to be summoned)

Notices

(a) shall prescribe the form or forms of notices to be sent;

Designation of classes to be summoned

(b) shall designate the class or classes of creditors and the class or classes of shareholders (if any) to be summoned, and, if the order provides that more than one class are to meet at the same time and place, the class or classes required to vote separately;

Material to accompany notice

- (c) shall designate the material to accompany such notice, which shall, in any event, include an explanatory circular, a form of instrument appointing a proxy (which form of instrument shall contain provisions permitting directions to be given as to voting and shall only name therein as proxies persons approved by the court for that purpose) and the latest balance sheet and statement of income and expenditure reported on by the auditors of the debtor company, and may direct other or additional financial statements to be included;

Service of Notice

- (d) shall specify the manner of serving the notice of meeting or meetings upon the creditors or class or classes of creditors and shareholders (if the court orders a meeting or meetings of shareholders to be summoned) and, with respect to creditors holding securities or obligations payable to bearer or holders of share warrants, may direct notice by advertisement, and, where notice by advertisement is directed such advertisement shall name a place or places where a creditor or holder of a share warrant or his duly appointed agent may secure, without charge, copies of the material prescribed to accompany the notice of such meeting.

Chairman

(2) The court may appoint a person and one or more alternates whose consent to act has been filed, to act as permanent or temporary chairman of the meeting or meetings. In the absence of the appointment of a permanent chairman, one shall be elected when the meeting is called to order.

Solicitation of authorization to vote

29. It shall not be lawful for any person to solicit or knowingly permit the use of his name to solicit any authorization (which expression shall include any instrument appointing a proxy, consent or other authorization) in connection with any compromise or arrangement unless the following information is presented in writing to each solicited person at the time of the first solicitation:—

(1) if the solicitation is by or on behalf of the debtor company, a statement to that effect; or

(2) if the solicitation is not by or on behalf of the debtor company, the name or names of the persons on whose behalf or at whose instance the authorization is being solicited and particulars of the class or classes and aggregate amount of securities, obligations, claims or shares of; against or in the debtor company which are owned or controlled for voting purposes by any such persons; and

(3) if the solicitation is by a person who is entitled to or may receive compensation or reimbursement of expenses for soliciting or recommending the giving of an authorization, a statement to that effect.

Prohibition of misleading solicitation

30. No person shall solicit or knowingly permit the use of his name to solicit any authorization by means of any statement which to his knowledge was at the time and in the light of the circumstances under which it was made false or misleading in any material particular.

Penalty

31. In the event of any contravention of the provisions of sections twenty-nine or thirty any person who knowingly contravenes or permits or authorizes the contravention of said provisions shall be liable on summary conviction to a fine not exceeding five thousand dollars.

Meetings

32. The following provisions shall apply to any meeting or meetings ordered to be summoned pursuant to an application made under sections three or four:—

Proxies

(1) It shall not be necessary that a proxy designated by a creditor be himself a creditor in order to attend and vote at the meeting at which he has been appointed to act as proxy.

Voting

(2) Voting on the proposed compromise or arrangement at meetings of creditors and classes of creditors shall in each case be by poll taken in such manner as the chairman directs, and the chairman shall appoint one or more scrutineers to compute the votes at the poll and report to the chairman. Votes may be given by proxy appointed under any proper form of instrument of proxy, notwithstanding that such form may not be the form distributed in accordance with paragraph (c) of section twenty-eight.

(3) If a creditor shall have voted in respect of any claim the amount of which has not been established by proof or determined by the court as provided by section eleven of this Act, but has been admitted for voting purposes, the chairman, if he is of opinion that the amount of such claim should not have been admitted, or that there is some question whether the claim should have been admitted as to amount or at all, shall make a report thereon to the court before the application is heard for the sanction of the compromise or arrangement. If a creditor or his proxy at the meeting objects to the voting by a creditor in respect of any claim or to the extent of the recognition of such vote and delivers, within two days from the date of such voting, to the chairman, his objections in writing, the chairman shall file with the court such objections in writing before the hearing of such application. Upon such hearing the court may adjudicate upon such objections and upon such adjudication shall deliver its reasons in writing and if necessary the results of the voting shall be modified accordingly.

Alteration of compromise or arrangement

(4) If any alteration or modification in the compromise or arrangement is proposed at the meeting and the amendment is made would substantially and adversely affect the interests of the creditors or class of creditors summoned, the chairman shall adjourn such meeting for the purpose of seeking a direction of the court in accordance with section six of this Act, and if such adjournment is made all other meetings directed to be summoned in respect of the same compromise or arrangement, the proceedings at which shall not have been concluded, shall be adjourned for the like period.

Direction in case of adjournment

(5) Upon any application to the court under subsection four of this section the court may give directions as to notice of the adjournment and such further directions as to the use at such adjourned meeting of instruments of proxy given in respect of the meeting as originally summoned or the use of new instruments of proxy and such directions as the court may in its discretion deem necessary or advisable.

Notice to dissentients

33. Where a compromise or arrangement has been agreed to by the requisite class or classes of creditors at the meeting or meetings ordered to be summoned

but dissentient votes have been cast by creditors of a class or classes affected, it shall be necessary, unless the court in its discretion otherwise orders, that notice be given to each dissentient creditor of such class or classes in such manner as may be prescribed by the court of the time and place where application will be made to the court for the sanction of the compromise or arrangement.

Expenses of compromise or arrangement

34. The court may, upon such notice to the debtor company and to the creditors or class or classes of creditors affected as the court may direct

(1) approve in advance the incurring of expenditures in connection with the compromise or arrangement proposed including, without limiting the generality of the foregoing, the expense of holding the meeting or meetings, fees and disbursements of solicitors and counsel, and the expenses in connection with any appraisal, report or enquiry;

(2) order that such expenses and any costs allowed by the court may be paid as part of the expenses of the compromise or arrangement out of the assets of the debtor company in priority to the claims of the creditors or classes of creditors whether secured or unsecured affected and notwithstanding that the compromise or arrangement either as proposed or altered at the meeting or meetings may not be agreed to by the creditors or sanctioned by the court.

Costs

35. The court may allow costs. Such costs (subject as hereinafter provided) may be allowed not only to a successful applicant and any person supporting a successful application but also to an unsuccessful applicant and any person bona fide opposing a successful or an unsuccessful application. Provided always that the court shall not allow more than one set of costs to persons representing or purporting to represent the same interests unless the court in its discretion shall determine that the justice of the case so requires.

Production

36. The court may from time to time order any director, officer, employee, auditor, trustee in bankruptcy or liquidator of the debtor company or any creditor or other person whatsoever to produce or make available any books, records, reports or other information in his possession or under his control which the court may deem requisite or desirable in connection with the submission, consideration, voting upon or carrying into effect of the compromise or arrangement either as proposed or as altered or modified at the meeting or meetings ordered to be summoned.

Appeal

37. Notwithstanding the provisions of this Act no order, direction or decision of the court made under section three, four, twenty-one to twenty-four inclusive, section twenty-seven, section twenty-eight, subsections four or five of section thirty-two, sections thirty-three, thirty-four and thirty-six of this Act shall be subject to appeal.

Holding or adjournment of meetings pending appeal

38. Notwithstanding that leave may be obtained to appeal from an order or decision of the court, the judge appealed from or the court or a judge of the court to which the appeal lies may order that any meeting or meetings, ordered under sections three or four to be summoned, should be held in accordance with the order appealed from or should be adjourned from time to time pending the final disposition of the appeal or should be adjourned sine die and no appeal shall lie from such order.

Default under compromise or arrangement

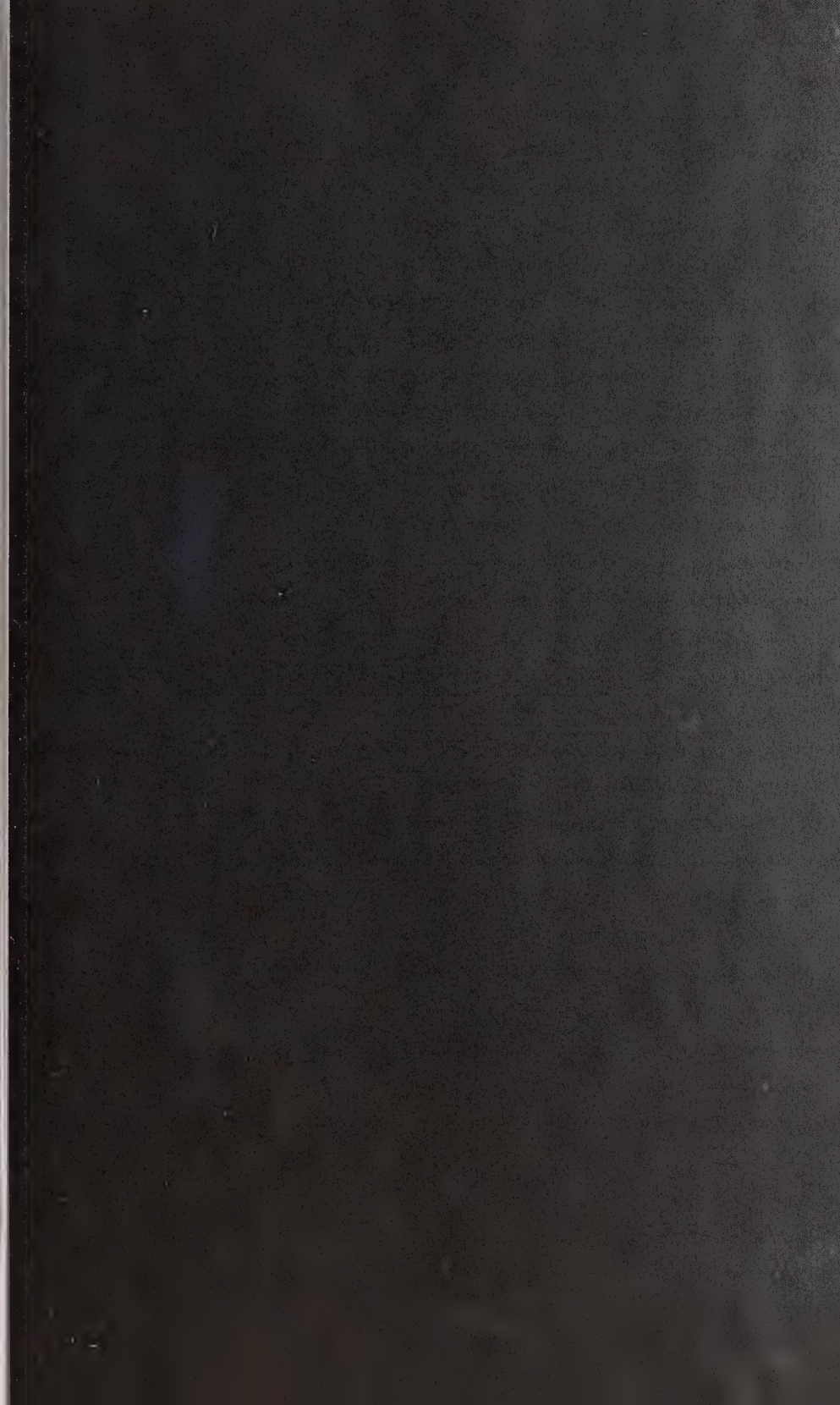
39. If default shall be made by the debtor company under any compromise or arrangement sanctioned under section five of this Act, no application may be made under sections three or four of this Act by the debtor company until the expiration of two years from the date of the order made under section five of this Act sanctioning such compromise or arrangement.

Documents to be forwarded to Dominion Statistician

40. Upon any compromise or arrangement being sanctioned by the court, the person having the carriage of the order shall promptly after the issuance of the same mail to the Dominion Statistician, Dominion Bureau of Statistics, Ottawa, a true copy of the order including a copy of the compromise or arrangement so sanctioned."

Pending proceedings

3. This Act shall not affect any proceedings under the said Act which were pending on the date when this Act comes into force.





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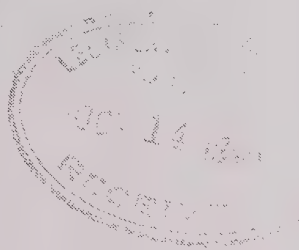
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1946

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 4

WEDNESDAY, JUNE 26, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

Mr. J. M. Bullen, K.C., representing The Canadian Credit Men's Trust Association.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy.

Mr. R. O. Daly, K.C., representing The Investment Dealers Association of Canada.

Mr. A. C. Crysler, Legal Secretary, Board of Trade of the City of Toronto.

OTTAWA

EDMOND CLOUTIER

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	Michener
Beaubien (<i>Montarville</i>)	Foster	Molloy
Beauregard	Gershaw	Moraud
Buchanan	Gouin	Murdock
Burchill	Haig	Nicol
Campbell	Hardy	Paterson
Copp	Hayden	Quinn
Crerar	Howard	Raymond
Daigle	Hugessen	Riley
David	Jones	Robertson
Dessureault	Kinley	Sinclair
Donnelly	Lambert	White
Duff	Leger	Wilson—(47)
DuTremblay	Maedonald (<i>Cardigan</i>)	

MINUTES OF PROCEEDINGS

WEDNESDAY, June 26, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senator Beauregard, Chairman, The Honourable Senators Aseltine, Buchanan, Campbell, Crerar, David, Dessureault, Duff, Euler, Gershaw, Gouin, Hayden, Hugessen, Jones, Lambert, Leger, Macdonald (Cardigan), McGuire, Molloy, Moraud, Paterson, Sinclair, White—23.

In attendance: The official reporters of the Senate.

Mr. J. F. MacNeill, Law Clerk & Parliamentary Counsel.

Mr. W. J. Reilly, K.C., Superintendent of Bankruptcy.

Bill A-5, "An Act respecting Bankruptcy" was again considered.

Mr. J. M. Bullen, K.C., representing the Canadian Credit Men's Trust Association, Ltd., was heard.

Mr. W. J. Reilly, K.C., Superintendent of Bankruptcy, was heard in explanation of certain clauses of the Bill.

Mr. R. O. Daly, K.C., representing The Investment Dealers' Association of Canada, was heard.

At 1.00 p.m. the Committee adjourned until 8 p.m. this day.

At 8 p.m. the Committee resumed.

Mr. A. C. Crysler, Legal Secretary, The Board of Trade of the City of Toronto, was heard and submitted a brief on behalf of the Board.

Further consideration of the Bill was postponed.

At 9.40 p.m. the Committee adjourned until to-morrow, 27th June, instant.
Attest.

A. H. HINDS,
Chief Clerk of Committees.

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MINUTES OF EVIDENCE

THE SENATE

OTTAWA, WEDNESDAY, June 26, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A5, an Act respecting Bankruptcy, met this day at 10.30 a.m.

The CHAIRMAN: Gentlemen, we will now proceed with our business. I will call on Mr. Bullen who, I understand, is appearing for the Canadian Credit Men's Trust Association Limited.

Mr. J. M. BULLEN, K.C.: Mr. Chairman and gentlemen, I appear on behalf of the Canadian Credit Men's Trust Association Limited. This is a Canadian-wide organization for the promotion of a high standard of ethics between wholesalers, manufacturers and retailers. It has some 1,500 members, all prominent wholesale and manufacturing houses situated across the Dominion, and has a credit clearing house bureau through which members get information as to the financial standing and trade activities of the retailers with whom they deal. The organization has its head office in Toronto, with branches in New Brunswick, Quebec, Manitoba, British Columbia, one other in Ontario, two in Alberta and two in Saskatchewan.

The association has acted as a trustee in Bankruptcy ever since the inception of the Bankruptcy Act and has handled a great many estates and has had a great deal of experience with the Act in practically all its forms. Before that, it acted as assignee under the old Assignments and Preferences Act.

Whilst the association acts as trustee, the submissions contained in this memorandum are advanced on behalf of the membership, representing the various wholesale and manufacturing houses, who are the creditors of the bankrupt estates. Trusteeship is performed more as a service to these creditors and the association is more interested in the Bankruptcy Act from the creditor's standpoint rather than that of a trustee. It is on their behalf that I should like to address myself to your committee this morning.

The association approves of the provisions making it possible for a debtor to enter into a composition, extension, or scheme of arrangement before as well as after bankruptcy. There is always a stigma attached to bankruptcy as when one mentions bankruptcy to a trader it is like mentioning the preparation of a will to some people—they feel it is the beginning of the end. Aside from this there should be some provisions for proposals, extensions or schemes of arrangement being made without the necessity of dealing through a licensed trustee or invoking any provisions of any Act.

Hon. Mr. MORAUD: Do you approve of the principle of those schemes?

Mr. BULLEN: Yes, sir, we do approve of that principle. We say that it should not be necessary for a man to go to a licensed trustee on all occasions. There are many proposals and schemes of arrangement that can go through with the consent and co-operation of the creditors all joining in without the necessity of a trustee interfering at all, or at least without invoking the provisions of the Bankruptcy Act.

These schemes of arrangement and composition are dealt with in part 2 of the bill, sections 11 to 24. We suggest that some provision should be inserted in the bill to validate informal arrangements and compositions or provide that they do not require the services of a licensed trustee at all. I shall have some-

thing to say at a later stage about a section in the bill which seems to me to eliminate proposals under the Companies Creditors' Arrangement Act, bulk sales, and that sort of thing.

Hon. Mr. HAYDEN: Your approval of that principle does not necessarily mean that you approve of bringing proceedings under the Bankruptcy Act that now might come under the Companies Creditors' Arrangement Act?

Mr. BULLEN: As a matter of fact, Senator Hayden, I want to speak about that later on. We are against that principle of eliminating the present procedure under the Companies Creditors' Arrangement Act.

Hon. Mr. MORAUD: It is merged in this bill.

Mr. BULLEN: Just a word as to some of these sections and subsections. Subsection 3 of section 11 reads:

No such proposal or any security or guarantee tendered therewith may be withdrawn pending the decision of the creditors and the court with respect thereto, nor shall any variation in the proposal by the court release the sureties thereunder, but the sureties shall have two days' notice of any amended proposal as approved by the creditors and the debtor, after which time, if no objection is taken, they shall be considered as having agreed to the amended proposal.

We think that interferes with the rights of sureties and is an encroachment on the law of suretyship that might lead to dangerous situations. As you know, the surety agrees—generally under some pressure—with the debtor to guarantee certain payments, say, ten, fifteen or twenty cents on the dollar, under certain conditions. We think if the court is going to alter any of these conditions the onus should strictly be put on the debtor or the creditors to get the surety's approval in writing, and there should be no procedure set up under which the surety might fail to get notice and be bound by changes he knows nothing about.

Hon. Mr. HAYDEN: Can you see any reason for departing from the general rule, that if I guarantee performance by some party it should be on my own terms?

Mr. BULLEN: No. Every law student from the time he enters on the study of the law is taught that principle.

Hon. Mr. HAYDEN: Is there anything on the ground of expediency that would justify it?

Mr. BULLEN: I would not think so. One takes a lot of time going to the courts to get approval, and there is no reason why the surety should not be notified. It seems to me it places too much of an element of chance in the fact that the surety might be away from his usual place of business or residence after he has guaranteed the indebtedness of the debtor for the purpose of the proposal. Then if some change is made and he does not object within two days, he is stuck with the change.

Subsection 2 of section 12 reads:—

In the case of a corporation the trustee shall send to each shareholder, bondholder and debenture holder affected by the proposal the documents referred to—and they are set out. We suggest that no trustee should be put to the very laborious procedure of sending the proposal or scheme of arrangement or composition to each shareholder, bondholder or debenture holder. After all, the shareholders appoint the directors, and no proposal or scheme can be made unless it is initiated by the directors, and there is no necessity of notifying the shareholders of some arrangement between the company and its creditors.

Hon. Mr. MORAUD: I suppose there could be publication in the newspapers about some things, otherwise the shareholders, bondholders or debenture holders, would not be notified at all.

Mr. BULLEN: But the theory of all company law is that the directors represent the shareholders. Here they are making some arrangements with their creditors, and the directors are acting for the shareholders. So why should notice be sent to all of them?

Hon. Mr. MORAUD: But have not the directors the right to make an arrangement with creditors without consulting the shareholders? Supposing they do that, surely the shareholders should be notified in some way either by newspaper advertisement or by letter?

Mr. BULLEN: But I would not think that a scheme of arrangement or proposal with the company's creditors would be made without consultation with the shareholders.

Hon. Mr. LEGER: In other words, you want to authorize the directors to take whatever action they see fit?

Mr. BULLEN: That is what we suggest. That is what they are there for, to carry on business, and if they want to make an arrangement with the creditors the trustee should not be put to the burden of notifying all the shareholders.

Hon. Mr. LEGER: In the first place, he would not have the names of all the shareholders.

Hon. Mr. HAYDEN: Of course, what you are talking about now is something entirely out of the ordinary course of business of the company.

Mr. BULLEN: The shareholders would know about it, anyway.

Hon. Mr. HAYDEN: If the plan were approved it might have the effect of robbing the shareholders of any further interest in the assets of the company. That is a pretty important step.

Hon. Mr. CAMPBELL: You feel that the responsibility of notifying all the shareholders should not be on the trustee.

Mr. BULLEN: That is it.

Hon. Mr. CAMPBELL: Is it the responsibility or the burden of the work?

Mr. BULLEN: Both. Our view is that the directors would make the best proposition. They are the agents, so to speak, the representatives of the shareholders, and cannot make it without the knowledge of the shareholders. Why do they have to be notified after it is made?

Hon. Mr. CAMPBELL: Would it cover your point to say that the notice would not be effective unless it was approved by resolution of the shareholders?

Mr. BULLEN: Yes, that might do. I would not think the directors would make a proposition unless they had the resolution of the shareholders.

Hon. Mr. CAMPBELL: Your point is that rather than have the trustee required to send notices of the proposal to all shareholders and bondholders, a meeting should be called and a resolution passed approving of the proposal before it is finally adopted?

Hon. Mr. HAYDEN: If the plan is approved by the shareholders before it is submitted by the directors it should not be necessary to send a notice out. I have some difficulty in accepting the view that the directors would submit a plan or proposal without some reservations, unless it had been approved by the shareholders.

Mr. BULLEN: This would not be so important if the Companies Creditors' Arrangement Act were not enveloped in the Bankruptcy Act.

Hon. Mr. HUGESSEN: The subsection requires the trustee to send various documents to every shareholder, bondholder and debenture holder. I should think that is an obligation which the trustee would be entirely unable to fulfil in certain circumstances.

Mr. BULLEN: The next thing that I want to deal with is subsection (1) of section 13:—

If the creditors by a ten per cent vote of those voting in person or by proxy at the meeting at which a proposal is being considered so require the meeting shall be adjourned to such time and place as may be fixed by the chairman. . . .

I would suggest that a ten per cent vote of those present is too small. Ten per cent of those present at a meeting might hold a small amount of the indebtedness of the debtor. It was thought that perhaps the committee might give some consideration to having this provide for—

Hon. Mr. HAYDEN: A majority vote.

Mr. BULLEN: Well, at any rate a higher percentage than ten—probably twenty per cent of those present, provided they hold thirty per cent of the claims, or something of that kind.

Hon. Mr. HAYDEN: Why should less than a majority of those present have that power?

Mr. BULLEN: If you would go that far, it would be all the better.

Hon. Mr. HAYDEN: And there could be a provision that a certain dollar value be represented.

Mr. BULLEN: A ten per cent vote is too small. Some persons might have an ulterior motive and they could easily get ten per cent of the shareholders present to adjourn the meeting and create obstacles that the majority would not think of creating.

Then, the word "shall" might be changed to "may". The subsection says "the meeting shall be adjourned". This might be changed to "the meeting may be adjourned".

Hon. Mr. HAYDEN: How could you say that? That would ignore the vote.

Mr. BULLEN: I have the word "shall" underlined in my copy of the bill, but it is not referred to in my brief. Perhaps I considered it was not worthwhile putting in the brief.

Then we submit that section 23 is much too radical, particularly subsection 10. Business to-day does not warrant more interference by administrative officials. In our view there is enough at the moment.

Hon. Mr. McGUIRE: Too much.

Mr. BULLEN: I quite agree with you, Senator, there is too much. We think it is a rather vicious principle to saddle these business arrangements with the sanction or approval of or interference by any administrative official, no matter who he may be. The court has the respect, generally speaking, of the majority of citizens and traders. It is the place of last resort where one's rights are adjudicated upon. When a matter is referred to the court the creditor feels, "Well, I have got the best I can get".

Hon. Mr. HAYDEN: Are you referring to the power proposed to be given to the court to formulate a proposal, notwithstanding the attitude of the shareholders or creditors?

Mr. BULLEN: That is subsection 10 of section 23, and it is so radical that it is hard for us to conceive why such legislation as that should be put on the statute books. After all, with the utmost respect to our judiciary, we know the judges are not business men; they have not had a training in business.

Hon. Mr. HAYDEN: Not necessarily.

Mr. BULLEN: I grant you that some of them have, but, as you know, judges as a rule are not business men. We submit that the court should not be burdened with the task of formulating a proposal, nor should it be given power to put it through irrespective of the wishes of the shareholders or creditors. If such legis-

lation as that has to be put through and we must have some tribunal able to make a compromise or proposal or scheme that the creditors must accept, one would suggest that probably the same procedure should be followed as in railway and telegraph matters. There is a Transport Board to deal with railway matters, and a Municipal Board to deal with municipal money by-laws. Bankruptcy is a kind of specialized piece of legislation, and if it is necessary to interfere with business to the extent that subsection 10 of section 23 does, we feel that probably a board of business experts should be set up. We are not advocating any such arrangement as that at all, because we realize how fatal and detrimental it would be to business men in the sale of their securities. You gentlemen would not buy securities if you knew the judge of a court could make some arrangement depriving you of some of your rights or adding some obligations without your having anything to say about it. That section we think could quite easily be deleted. Coming to subsection (4) of section 18, you will note this provides:—

The court may not make any material alterations in the substance of the proposal. . .

We submit that is much too wide and leaves room for appeals and arguments as to what is or what is not "material alteration in the substance of the proposal". This subsection might quite well be deleted, so long as the court has power to vary the proposal in the best interests of the creditors. I think some such language as that is used in the present act, and the committee might well consider whether it would not be advisable to leave the section as it is.

Hon. Mr. HUGESSEN: Would your suggestion be met by deleting part of the first and second lines of subsection (4), so that it would read: "The court may correct, or supply, any accidental or formal error or omission in the proposal," and so on.

Mr. BULLEN: Yes, Senator. I think the court can be trusted to make a change, so long as there is a qualification that it is to be in the best interests of the creditors.

Hon. Mr. HAYDEN: If the words referred to by Senator Hugessen were deleted, that would accomplish your object, would it not?

Mr. BULLEN: Yes, Senator.

I do not know what the draftsman meant by subsection (4) of section 19:—

In proceedings by a person not bankrupt making a proposal for a composition the rights of all persons affected thereby shall be resolved as of the date of the filing of the proposal.

Mr. BULLEN: The draftsman says:—

This is a new subsection. The effective date of all proceedings is otherwise fixed in the Act. This is deemed necessary with respect to these particular proceedings.

If this subsection is intended to mean that all actions or proceedings against a debtor are to be stayed while he is in the throes of having some arrangement with his creditors approved, it is not well expressed and should be clarified. As you know, there is a section in the Companies Creditors Arrangement Act to that effect. The draftsman seems to indicate that this subsection is inserted because rights are crystallized in other instances by other sections of the bill. If that is the only object, we think the rights of the creditors should not be interfered with in that way. It is more or less blind legislation: one does not know what it might lead to.

Hon. Mr. HAYDEN: Why should you crystallize the rights of creditors at the time when there have been no bankruptcy proceedings as we ordinarily understand them? But this is looking to proceedings outside of bankruptcy.

Mr. BULLEN: I do not think it is necessary, and again I say it is not advisable that the creditors' rights should be interfered with. Their rights should be protected right up to the time they get their money back.

Hon. Mr. LEGER: Is not the subsection inserted to prevent somebody getting a preference?

Hon. Mr. HAYDEN: The law is clear on that now.

Hon. Mr. McGUIRE: Mr. Reilley is present. I suggest we ask him for an explanation of that subsection.

Mr. REILLEY: Its purpose is very simple indeed. In connection with the proof of claims of creditors and other matters in the ordinary bankruptcy proceedings, the creditors' rights are established as of the date of the filing of the petition or the assignment. If the proposal is made before bankruptcy, what time are you going to fix to have the right of creditors established? That is all it means.

Hon. Mr. CAMPBELL: What happens to the creditors between the filing of the proposal and the settlement of the proposal?

Mr. REILLEY: Their status is established as from the date of the filing of the proposal. Any creditors coming in after that would have their rights resolved in the same way as in bankruptcy.

Hon. Mr. CAMPBELL: In other words, creditors existing at the filing of the proposal might accept 50 cents on the dollar, and the creditors who came in after that might receive 100 cents.

Mr. REILLEY: Yes.

Hon. Mr. HAYDEN: If the creditor at the time of the filing assigned his claim, you are freezing his rights as of the date of the filing; you are not freezing the creditor's dealing with his rights?

Mr. REILLEY: No. It is a fixed date when the rights of the creditors in the case of a composition shall be determined.

Hon. Mr. HAYDEN: Why do you think that is necessary where there is no bankruptcy?

Mr. REILLEY: Because the same problems and differences may arise in the setting up of the claims as though bankruptcy had occurred, and you have to have some time when those rights are settled. There may be two preferential creditors who set up rights under a proposal, and they have to fight it out as to who has the preference and gets payment first.

Hon. Mr. HAYDEN: It seems to me, subject to further thought, we should let the creditors fix the cut-off date.

Mr. REILLEY: I do not see any radical change in this.

Hon. Mr. HAYDEN: Except that you are dealing with ordinary rights under the law, not under what we generally understand as bankruptcy. The debtor is not in bankruptcy and may never get into bankruptcy. I do not like freezing the rights of anybody unless an insolvency has occurred by a petition leading to bankruptcy.

The CHAIRMAN: Thank you, Mr. Reilley.

Mr. BULLEN: If that is the purpose of the draftsman, then we suggest there should be some section here as there is in the Companies Creditors Arrangement Act stopping the continuation of a proceeding that is already started by some creditor against the debtor or stopping him issuing a writ and commencing proceedings. I do not see any provision in the bill for that purpose. That is rather important, because one creditor might upset the apple-cart by starting something afterwards and causing a great deal of trouble.

Subsection 5 of section 19 reads:—

Any person making a proposal shall act in complete good faith and failure on his part to make a full disclosure of his property and other material facts relating to the causes of his financial difficulties or his ability to pay or to make a fair and adequate valuation of his property shall vitiate the proposal unless the court is satisfied that there was no intent on the part of such person to mislead or deceive his creditors.

We suggest that is weak legislation. It might be more effective if you inserted a penalty clause of some kind.

I see the draftsman has added section 203:—

(1) If any creditor, or any person claiming to be a creditor, in any proceedings under this Act, wilfully and with intent to defraud, makes any false claim,—etc.

Then he is subject to some penalty. We think the aim of the draftsman could be still better accomplished by amending this section to include any debtor. There should be some teeth in the section in the way of a penalty.

Under section 4, subsection 3, a shareholder of a corporation may file a petition against the corporation. That in effect is incorporating provisions of the Winding Up Act and of the various provincial companies acts into the Bankruptcy Act. We think those acts should stay as they are, and that the winding up should not be brought into the Bankruptcy Act at all. A shareholder might cause a great deal of harm to a solvent organization. We have some individuals around Toronto who purchase one share, get into a meeting of shareholders, and cause quite a bit of trouble.

Hon. Mr. McGUIRE: Are there more than one of such persons in Toronto?

Mr. BULLEN: I have one that comes into my mind. He causes a great deal of trouble. A shareholder under the Bankruptcy Act might suggest some company is insolvent, and the advertising might be very harmful.

Hon. Mr. HAYDEN: You are giving rights to persons who in the bankruptcy would be the lowest in the scale of ranking creditors.

Mr. BULLEN: Yes. Subsection 3 of section 4 is the only subsection that deals with the question of insolvency. If it is meant to bring the winding up of a corporation under the Bankruptcy Act—and it looks as though the draftsman had this in mind, as many of the conditions set out in the subsection are based on grounds other than insolvency—a great many provisions of the Winding Up Act would have to be made applicable or incorporated in the bill. We think the principle of bringing into the Bankruptcy Act the winding up provisions of the Winding Up Act is wrong, and that the right of filing a petition should not be given to a shareholder.

Hon. Mr. HUGESSEN: I am disposed to agree that paragraph (f) of section 3 would empower the shareholder of any corporation to present a petition for winding up in bankruptcy against the company if "for any other reason it is just and equitable that the property of the company be realized upon and administered for the benefit of the creditors and the shareholders." He could support that by his own affidavit.

Mr. BULLEN: Yes. He might be disgruntled because he has not received any dividends and thinks the manager has a good job.

Hon. Mr. HAYDEN: He may want his money back.

Hon. Mr. HUGESSEN: Yes.

Mr. BULLEN: As you gentlemen know, that is one of the most contentious sections of the Dominion Winding Up Act as to what is admissible. The courts have wrestled with that for some time. It seems to me that the stigma attached

to the word "bankruptcy" against a corporation might cause tremendous harm to it.

Hon. Mr. HUGESSEN: It is pretty dangerous.

Hon. Mr. HAYDEN: It might occur while the directors of the company followed a policy to improve the whole value of the assets before giving any benefits to the shareholders, and the shareholders might not like that. I do not know what "just and equitable" means.

Mr. BULLEN: No, there is no hard and fast definition of that yet.

Hon. Mr. HAYDEN: You just take a run at it.

Mr. BULLEN: This bill eliminates the custodian. The association approves of that step. In practically all its bankruptcy experience it finds that the custodian is merely a "fifth wheel." There are very few instances where the custodian is not continued as the trustee, and there seems to be no valid reason why there should be an accounting for the usually short period that the custodian is in possession for the purpose of preserving the assets and breaking off when he is appointed trustee.

Hon. Mr. HAYDEN: Since the trustee is the representative of all the creditors, maybe he should ascertain their views before acting.

Mr. BULLEN: I was just going to say that one helpful suggestion might be made here. Under subsection (5) of section 9 the Official Receiver, on accepting an assignment, appoints a trustee, "whom he shall, as far as possible, select by reference to the wishes of the most interested creditors or shareholders". Now, we all know there is favouritism. It is only human nature to favour certain individuals; we all have our friends and our associations. This wording, we think, leaves room for the Official Receiver to appoint one man as a trustee, or one association—it might be us for example, though we would not kick so much in that case.

Hon. Mr. HAYDEN: That would be well-deserved recognition.

Mr. BULLEN: Yes. In our opinion the word "shareholders" should be deleted and "most interested creditors" should be made clearer and definite. Too much room is left for favouritism by some particular registrar. Perhaps the words "substantial trade creditors" would help if substituted for "interested creditors".

Subsection (2) of section 32, which deals with the registration of the receiving order, seems to me to conflict with subsection (5) of section 27. That subsection (5) is a revamping of a section that is in the present act. The subsection says:—

On a receiving order being made or an assignment being accepted by an Official Receiver, a bankrupt shall cease to have any capacity to dispose of or otherwise deal with his property which shall, subject to the provisions of this Act, and subject to the rights of secured creditors forthwith pass to and vest in the trustee named in the receiving order or assignment...

But section 32, subsection (2), states that the trustee is not the registered owner of the interest of the bankrupt until the receiving order or assignment is registered. It seems to me that the conflict between the two subsections might lead to some difficulty.

Hon. Mr. HAYDEN: Of course, you have to look to the interest of the general public. A person may purchase a bankrupt property without any notice.

Mr. BULLEN: When he purchases a property he searches in the sheriff's office, and he could search in the bankruptcy office just as well. If he finds an authorized assignment there he takes the property at his peril.

Hon. Mr. HAYDEN: Why not leave it that way?

Mr. BULLEN: We think this change interferes with that.

Hon. Mr. HAYDEN: It might. It seems to leave a gap, doesn't it?

Mr. BULLEN: Yes, that is the point. There might be some machinations that would cut out the effect of section 6 of the present act, which says that the property becomes the property of the trustee upon the making of the authorized assignment or receiving order.

Hon. Mr. HUGESSEN: Whereas section 32, subsection (2), makes the registration of the receiving order essential for that purpose.

Mr. BULLEN: That is correct.

Now I come to section 38, licensing of trustee. Perhaps I could leave that until I deal with the discharge of trustees.

Section 39 (4) (g), which provides that the Superintendent shall audit and examine trustees' accounts, would have to be deleted if what is suggested hereafter as to the granting of trustees' discharges is adopted. We think the courts should examine and audit the trustees' accounts, our view being that the creditors have absolute faith in the courts. It is true that at the moment we have a most excellent and benign Superintendent, but we may not always have him. In surrogate matters and winding-up matters and so on the accounts are passed before the court. We know of no agitation by any body of creditors, debtors or trade associations to have the present practice changed.

Hon. Mr. HAYDEN: The lawyers too take their bills to the court.

Mr. BULLEN: Yes. As I say, without disparaging anybody's standing, reputation or ability, the general public have absolute confidence in the courts, because of their continuity and suitability. For my part, I think it would be poor legislation to take the power to pass accounts away from the courts and vest it in a government official.

Hon. Mr. CAMPBELL: I suppose from a practical standpoint as well it is better to have the auditing done by the courts rather than by one centralized official.

Mr. BULLEN: We think it is much more practical as it is at present. We cannot conceive how, when bankruptcies become numerous, an official in Ottawa could possibly audit all the accounts coming in from the whole country. The debtor, the trustee, the creditor, or anyone else concerned with bankruptcy proceedings has always had the court in his locality available to him. One can have accounts audited and passed much better across a table, as it were, than by correspondence. An official at Ottawa might have some complaint about the manner in which a trustee was administering an estate. It would take some time to explain the matter to the official at Ottawa, whereas it would be thrashed out before a court on the day set for the hearing.

Subsections (7), (8), (9), (10), (11) and (12) of section 39 lead to too much administrative interference with the winding up of individual bankrupt estates. If this section must go through, the word "Court" should be inserted in lieu of "Superintendent" in a great many instances which will be patent to those considering the bill.

In section 41 (3) the word "Court" should be inserted for the word "Superintendent" in the third line. This subsection says:—

The new trustee, shall, as soon as funds are available, pay to the former trustee, his proper remuneration and disbursements, as approved by the Superintendent. . . .

We suggest that the approval be left with the court.

Hon. Mr. HAYDEN: You will notice that the same subsection goes on to say: and in the event of sufficient funds not being realized to pay the remuneration and disbursements of all the trustees the court shall determine the remuneration and disbursements that each trustee shall receive. . . .

Mr. BULLEN: Yes. There is no reason to divide the authority.

I come next to section 44 (5). If this subsection means that all the trustee's records, including his accounting, are to be contained in one book, it is impracticable in many instances. It is a mistake to make such an over-all coverage such as this, as the books necessary in one estate may not be suitable, adoptable or sufficient for some other estate. The present section, which requires the keeping of "proper" books, along with the power of supervision given the superintendent, should be sufficient. We feel it is an error to try to cover every situation that might arise in bankruptcy. There are large, small and medium corporations. Some of them take two or three months to wind up, while others take years. An effort to have the section state what books the trustee must keep in connection with every estate is aiming at the impracticable and the impossible. The present section reads to the effect that the trustees shall keep proper books of account, and if any difficulty arose we think the court would decide whether or not the books were proper.

Section 44 (6) says that the estate record book and all other books relating to the administration of an estate shall be the property of the estate.

Hon. Mr. HAYDEN: Have you given a correct interpretation of subsection (5)? It says:—

The trustee shall keep proper records of the administration of each estate to which he is appointed, which shall include an estate record book . . .

It does not seem to be dogmatic.

Mr. BULLEN: I prefaced my remarks with the statement that if that means the trustee has to keep all his records, including his account, in one book, it is impracticable. I have in mind one winding up, the Canadian Department Stores. That company had a large number of stores all over Ontario, and it would be impossible to keep all the trustees records for a company like that in one book.

Hon. Mr. HUGESSEN: "As prescribed."—what does that mean? The same words are in the old section 55.

Hon. Mr. HAYDEN: Would it be by regulation?

Mr. BULLEN: There are no regulations yet attached to this bill. They might fix that up.

Mr. REILLEY: That is my intention.

Hon. Mr. HUGESSEN: Under subsection 5 of section 44 the books to be kept by the trustee "shall include an estate record book, as prescribed."

Mr. BULLEN: They must be proper books.

Hon. Mr. HAYDEN: That is what it says now. The difficulty is if you leave it as it is you would have books of account containing receipts and disbursements, on top of which you would have to transfer all those entries into an estate record book, unless you made some change in the language.

Mr. BULLEN: I come now to section 53. This is a very important section, as it gives any person dealing with the bankrupt under a conditional sale agreement, hire-receipt or the like, the right to claim his property. What notice is to be given, whether it is to be personal service, in writing, registered or ordinary post should be set out in the bill. This is a lengthy section and deals with the establishment of a claim by a secured creditor. Our suggestion is that the subcommittee should analyse that very carefully for any infringements on the rights of the secured creditor, and the notice to be given should be very clear and specific.

Subsection 5 of section 53 reads:—

The trustee shall in no case be liable for the costs of establishing a claim to any such property or of such appeal or for any loss or damage suffered by the claimant while such property was in the possession of the trustee or occasioned by such dispute made in good faith.

If the creditor has got a claim, and is dragged into court and substantiates his claim, why should he not be indemnified for proving his claim? The trustee should take some responsibility. If he disputes any claim we feel the creditor should not be burdened with the costs of the proceedings.

Hon. Mr. HAYDEN: In other words, there should be some penalty on him in his representative capacity for any step he takes which proves to be wrong.

The CHAIRMAN: I suppose good faith should be the rule. So the creditor would have to prove bad faith. How can he?

Hon. Mr. LEGER: Does it not mean he is personally liable?

Hon. Mr. HAYDEN: No. I think there must be another section as to that.

The CHAIRMAN: How is one to prove bad faith?

Hon. Mr. HAYDEN: It is a little bit better than some wartime regulations where you cannot even sue.

Mr. BULLEN: Subsection 6 of section 53:—

No other proceedings shall be instituted to establish a claim to or to recover any right or interest in any such property except as provided in this section.

It seems to us that this is rather dangerous legislation, in that it is curbing the rights of creditors too much and is too wide. The other courts should not be born of jurisdiction in such matters. Often points arise in the administration of the bankrupt's estate, and the creditors and the trustee should have the right to go to the other courts, they should not be confined to the Bankruptcy Court in all matters that arise. There are many branches of the law that some judges are better versed in than others. You can get an adjudication on a particular feature that might arise in bankruptcy from one of the circuit judges rather than from the Bankruptcy Court. It is just a consideration whether we should take jurisdiction away from the other courts. I have in my experience often had a judge direct the issue to the other court because he thought it could be better disposed of by a judge there than by himself.

Section 68 deals with preferences. This section replaces section 64, one of the most important sections in the old act. It has been the subject of a long line of jurisprudence which has been established more or less since the inception of the old Assignments and Preferences Act. The whole difficulty in the mind of the draftsman seems to be that in some provinces you are required to prove concurrent intent on the part of the debtor and the creditor, and in other provinces you are not so required. If it is the better part of wisdom that concurrent intent need not be proven, the present section can easily be amended by adding that a creditor shall not have to establish concurrent intent in order to succeed.

It seems a pity, as it were, to junk the line of jurisprudence that has been established over that section. I do not suppose there is any other section of the act that has had more legal interpretation than the section dealing with preferences. Now we have it pretty well defined by precedents. All those would have to go overboard and we should have to determine what came within the term "transaction" used in this section.

Section 78. This deals with the disbursement of dividends, both interim and final. It is submitted on behalf of the association that the amount and time of payment of dividends is an administrative function that can best be

left with the trustee and the inspectors of the estate, and any interference therewith by the superintendent should be eliminated. Inspectors of the estate do not hold up dividends; they are subsidiary creditors, and in my experience they want their money as quickly as they can get it. Generally speaking the trustees act in good faith, and the inspectors more or less force their hands on the payment of dividends. They can make application to the court if the trustee is not shelling out as they think he should. We feel that that should be left to the trustee and the inspectors.

Hon. Mr. CAMPBELL: Is not this to give inspectors power in extreme cases?

Mr. BULLEN: That may be. That only takes me back to the remark I made a short time ago, Senator Campbell, that as long as we have the present efficient bankruptcy superintendent that is all right, but we do not like to leave something blank on the statute book which might work a hardship on the trustee.

Hon. Mr. HAYDEN: That raises another question. Why should the superintendent have the power; why should it not be the court? Is there any reason one way or the other?

Mr. BULLEN: No. As I say, the inspectors can always apply to the court.

Hon. Mr. HAYDEN: The ordinary procedure would be for the trustee to decide to pay a dividend. Supposing the inspectors say, "Go ahead and pay a dividend." But the trustee may say, "No, I will not pay a dividend." Then you reach a point where some higher authority, whether the court or the superintendent, should give that direction.

Mr. BULLEN: I am wondering, Mr. Chairman, whether I should ask a question on section 68. It occurs to me that possibly the object of the draftsman was to try to take the question of intent out of it altogether. If a transaction occurs following a certain pattern or style, then it is deemed fraudulent and void. This removes the question of intent altogether. Just say that if the transaction happens it is fraudulent and void. This raises a principle that I think we might very well consider,—whether intention should be a factor in determining what is a fraudulent transaction, or whether the transaction itself should be the determining factor. That is the trend in modern legislation, and certainly in wartime legislation.

Hon. Mr. HUGESSEN: The trouble arises under the present section on the interpretation of the words "with a view of giving such creditor a preference." Under the present section fraud is deemed to be the result of giving a preference.

Hon. Mr. HAYDEN: There is no question of intent. That raises the principle.

Hon. Mr. HUGESSEN: Yes.

Mr. BULLEN: Section 82. On this section I have the following note: It is much too wide and interferes with the court's function. A trustee now has to apply to the court, which, it is submitted, is the proper place for his discharge. On that application the superintendent may intercede, and as the trustee has to file his report with the superintendent, it would seem that the better procedure would be to have the trustee continue to apply to the court on notice to the superintendent, and if the superintendent objected to the discharge for any reason he can appear and so state rather than have the trustee await the superintendent's approval at his convenience. Courts are always available and officials are not.

This section conflicts with the power of the court and the discretion of inspectors and creditors in that the superintendent under subsection 2 thereof may reduce or disallow any charges which to him appear unreasonable or excessive. In other words, the superintendent is put in a position where he may veto the discretion of the creditors or inspectors on a matter with which they are actively concerned and there is no review of his veto, if exercised.

That would be the effect of section 82.

HON. MR. HAYDEN: Yes. You could overcome your objection in one of two ways: one, give the court that power; the other, give the trustee the right to go to the court over the veto of the superintendent.

MR. REILLEY: That is given, an appeal to the court.

HON. MR. HAYDEN: Is that in section 91?

MR. BULLEN: I am not sure that it is from the way it is worded. That brings up the point of release of the trustee. Probably I am repeating myself to some extent, but I want to make it clear that we are strongly in favour of continuing the present practice of having the trustee discharged by the court. Section 86 of the present Act provides for that, but section 91 of the Bill substitutes the superintendent for the court. I will not take up your time by going all over what I have said as to the court being the forum in which everybody has confidence for the auditing and passing of accounts of officials, liquidators, executors and so on.

HON. MR. HUGESSEN: Would it perhaps not be more convenient to have the accounts passed by an official like the superintendent than by the courts?

MR. BULLEN: We say not, Senator. I have just given one reason. Another reason is this. When a trustee is being discharged his conduct in the administration of the estate and his records have to be gone over, and it is impossible or all that to be done between Ottawa and Vancouver, Ottawa and Edmonton, Ottawa and Halifax, Ottawa and Toronto, or Ottawa and any other place at some distance. We ask, what is wrong with the present method? The trustee comes before the judge, and any creditor or anyone else connected with the bankrupt can appear and say, "You should have done that," or "You should not have done such and such a thing." That is all thrashed out in a day or so; these matters do not take very long, in my experience. Furthermore, the superintendent has his eye on the administration of the estate all the time, and he can make representations to the court. If he notices that a trustee is not acting in good faith or is not administering the estate as he should, he can intervene and make a report to the court.

HON. MR. HAYDEN: The right of appeal in section 91 would appear to be a right of appeal by any creditor or by the bankrupt. I do not see any provision for an appeal by the trustee from the Superintendent's determination of his accounts.

MR. BULLEN: Subsection (7) says:—

The Superintendent shall consider such objection

that is a creditor's or bankrupt's objection.

and may grant or withhold a release accordingly or give such directions as he may deem proper in the circumstances.

And subsection (8):—

Notice of his decision shall be given by the Superintendent by registered mail to the objecting creditor or creditors, bankrupt or trustee, as the case may be, and an appeal therefrom may be filed in the court within ten days of the date of the notice, and the court on such appeal may make such order as it deems just.

It did not appear clear to us from those subsections whether or not it was just in the case of a creditor or bankrupt filing some objections that an appeal lay, or whether an appeal would lie from the discretion exercised by the superintendent against the trustee. Someone might very well interpret these subsections as meaning that they do not give a right of appeal to the trustee

from a refusal of his discharge by the Superintendent. If the Superintendent is to be given the power to discharge or refuse to discharge the trustee, there should be an appeal available.

Hon. Mr. HUGESSEN: The note opposite section 91 states that the change in the section, whereby the Superintendent rather than the court may release a trustee, was recommended by the Montreal Board of Trade.

Mr. REILLEY: That is the note I have in my file.

Hon. Mr. CAMPBELL: Mr. Chairman, I wonder if we could have a statement from Mr. Reilley as to the reason for this proposed change. The change seems to me to be far-reaching, and from a practical point of view I do not think it would work nearly as well as the present system of having the application heard in court, where all the parties can appear and present their case.

The CHAIRMAN: Are you prepared to make a statement as to that, Mr. Reilley?

Mr. REILLEY: Mr. Chairman, in order to check on the administration of a trustee it has been necessary for the Superintendent to obtain a statement of the trustee's receipts and disbursements and go through it very analytically, to find out whether or not he has administered the estate properly. In all the time since we have been doing that in my office, going through the accounts and straightening out certain items of disbursements which appeared to us to be unwarranted, I do not think there has ever been a case where a trustee has gone to court and had the accounts changed after we had passed them. The result is simply that we have done all this work and the court has been nothing more than a rubber stamp for what we have done. In fact, in some of the courts there arose the practice of putting on their order a note that the accounts had received the approval of the Superintendent.

Hon. Mr. CAMPBELL: Do you make an audit of the accounts before the court does?

Mr. REILLEY: Yes. We have to go through the trustee's statement and check the expenses in order to know whether the estate is administered properly.

Hon. Mr. CAMPBELL: That is done before it goes to the court?

Mr. REILLEY: Yes. And in the thirteen years of my experience there has never been one case where the court has objected to the accounts after our approval. So the present system means duplication. In England the Inspector General of Bankruptcy, under the Board of Trade, passes on the trustees' accounts. The reason why we adopted a different system was that when our Act was first passed there was no Superintendent of Bankruptcy in Canada or any other official who could pass on accounts, so this work was assigned to the courts. What is proposed now is the adoption of the system that has been followed in England for so long.

Hon. Mr. CAMPBELL: Why would it not be well to leave the court with the apparent authority that it now has to audit accounts, if that would satisfy the public?

Mr. REILLEY: It would be only a duplication of work.

Hon. Mr. CAMPBELL: Not necessarily, if a right of appeal is provided.

Mr. REILLEY: I am quite agreeable to that. I want the Committee to understand that so far as I am concerned I think the discretion of the Superintendent in any matter of this sort should be subject to appeal to the court. I am not trying to set up the Superintendent as an arbitrary bureaucratic official from whose decisions there should be no appeal. I would be the first one to say, "Yes, provide for the right of appeal to the court from the discretion of the Superintendent in such matters." But to go to the court for the passing of accounts after the Superintendent has done all the work in connection with it is merely a duplication of work.

Hon. Mr. CAMPBELL: The reason why I suggest that you might still leave the right to go to the court is that I think there is in our legislation to-day a tendency to rob the courts of power and authority, but I believe the people over the country are far more satisfied to have the court as the final tribunal in matters of this kind. Probably a right of appeal would be sufficient. Do you have the parties appear before you at the time the audit is made, or is that done by correspondence?

Mr. REILLEY: It is done by correspondence, and we get along well. There has never yet been any occasion when we have not arrived at a satisfactory adjustment of accounts, except perhaps in a few odd cases where the differences were such that I simply told the trustee he had to take the matter to the court; and in every such case the court decided the matter at issue. But otherwise, in 999 cases out of 1,000, the matter is adjusted satisfactorily by correspondence. We ask for explanations on this point and that when necessary, and eventually the thing is ironed out and the trustee is notified that there is no objection to his statement and that he can go ahead.

Hon. Mr. HUGESSEN: Normally, then, he does not apply to the court until he has received your O.K.?

Mr. REILLEY: No.

Hon. Mr. HUGESSEN: And normally the court will not hear him until it knows that he has received your O.K., is that it?

Mr. REILLEY: Very often that is the case.

Hon. Mr. GERSHAW: Does the application to the court increase the costs in these matters?

Hon. Mr. HAYDEN: A negligible amount, I should imagine.

Mr. REILLEY: The costs would not be increased by one cent by the application to the Superintendent, because in my office I have a staff to check these statements as they come in.

Hon. Mr. GERSHAW: My question was whether the application to the court would increase the costs in the action.

Mr. REILLEY: Yes.

Hon. Mr. GERSHAW: By any appreciable amount?

Mr. REILLEY: Well, they would be increased by the amount of the fees that the court collects, which on the average amount to about \$9 or \$10.

Mr. BULLEN: May I say to Mr. Reilley through you, Mr. Chairman, just what section in the bill requires approval of the superintendent, so that I can deal with that. I cannot find it.

Mr. REILLEY: There is nothing in the act to that effect, and that is why it was put in subsection (g) that you referred to previously.

Hon. Mr. HAYDEN: The practice has developed by reason of the attitude taken by the judge on the hearing.

Mr. BULLEN: I could not find in the act anything requiring the superintendent's approval. Our main objection is that it is impracticable. We would have to come to Ottawa before we could get approval of the superintendent.

Hon. Mr. HUGESSEN: That is already done now.

Mr. REILLEY: Yes. There is no difficulty whatever in getting the necessary records. They are merely sent by mail in a small parcel. Any part of the country is within one day of Ottawa practically. As a matter of fact Vancouver is no further from my office than Fort Frances is from Toronto. The question of distance does not enter into it at all.

Hon. Mr. HAYDEN: It was not the question of distance that I understood was raised; it was the question of the bulkiness of the records.

Mr. REILLEY: That does not enter into the picture at all.

Mr. BULLEN: May I reiterate that we do feel that if you leave it open to have the superintendent grant the discharge that it does and will leave it open for delay and confusion in getting the records down here. One knows that air-mail can go from Ottawa to Vancouver in a day, and that sort of thing, but bulky records do not come by air-mail. We suggest that the important matter of discharging the trustee should be left where it is now, in the hands of the courts: (a) because the general public, creditors, debtors, trustees and everybody else have more respect for the court and what the court does than for any administrative official. The more you can keep regulations dealing with the commercial relationship of individuals before the court the more those individuals will be pleased with it.

Hon. Mr. CAMPBELL: Mr. Bullen, I have not had much bankruptcy experience in recent years—

Mr. BULLEN: Nobody has in recent years. I think there were only three bankruptcies last year.

Hon. Mr. CAMPBELL: Do you not sometimes find creditors or persons interested in the estate appear when an application is made for discharge of the trustee and make representations why he should not be discharged?

Mr. BULLEN: Yes. He cannot do that without the superintendent. He will have to write and there will be more correspondence. He will be asked: What is your claim, what is your difficulty, why are you disgruntled, why should he not be discharged? Whereas if the application is made to the court everybody can come there, it is an open forum, and make whatever representations may be considered necessary.

Hon. Mr. CAMPBELL: Is the creditor entitled to notice?

Mr. BULLEN: The creditor is entitled to notice at the present time on discharge of the debtor and the discharge of the trustee.

Section 91, subsection 6. This subsection provides for creditors filing objections; but no provision seems to be made for the trustee to have an opportunity of answering or meeting them. This is the subsection:

Any creditor or bankrupt desiring to object to the release of a trustee shall forward to the Superintendent and to the trustee, not less than two days before the date fixed for the release of the trustee, particulars in writing of his objection.

A creditor may file objections that may not have any merit in them at all, yet there is no direction that the trustee shall answer them.

Hon. Mr. LEGER: Would he not have an inherent right to answer?

Mr. BULLEN: He may not have the time.

Hon. Mr. LEGER: It is two days.

Mr. BULLEN: It is not less than two days before the date fixed for the release of the trustee.

Hon. Mr. LEGER: It is the time you object to?

Mr. BULLEN: It comes down to that. I think he should have lots of time to answer.

The CHAIRMAN: Should we not understand that the superintendent receiving the objection would communicate with the trustee?

Hon. Mr. HAYDEN: Only if he feels any consideration should be given to the objection I would think.

The CHAIRMAN: If he gives it consideration he might communicate with the trustee.

Hon. Mr. HAYDEN: Yes.

Mr. REILLEY: May I say, gentlemen, that in our practice in the office we get innumerable objections of all sorts from the creditors with regard to the administration of the estate. Sometimes we do correspond with the trustee to find out what he has to say about the objections, but in nine cases out of ten we know enough about the matter to say that there is nothing in the objections, in which case we dispose of them without communicating with the trustee. But if in any objection there is anything which we cannot dispose of in that way, it would be unreasonable to make a ruling without giving the trustee an opportunity to make a statement.

Hon. Mr. HAYDEN: There can be no objection to giving that right?

Mr. REILLEY: Absolutely not. It is difficult to think of everything when preparing a draft bill. I would be the first to want to have it included.

Mr. BULLEN: Section 105, subsection 3. The present act defines those who are not entitled to vote and is clearer than naming any degree of relationship. The subsection reads:

The following persons shall not be entitled to vote on the appointment of a trustee or inspectors, namely:

- (i) any person related to the bankrupt to the third degree by blood or marriage, or a partner of the bankrupt or any person associated with the bankrupt or a member in any co-operative undertaking.

The subsection in the Act reads:

The following persons shall not be entitled to vote on the appointment of a trustee, namely:

- (i) the father, mother, son, daughter, sister, brother, uncle or aunt by blood or marriage, wife or husband of the bankrupt or authorized assignor.

Hon. Mr. HAYDEN: What does "associated with the bankrupt" mean?

Mr. BULLEN: We do not know. We think it better to retain the wording in the present act. When you say father, mother, son, daughter, sister, brother, uncle or aunt by blood or marriage, you know who are excluded.

Section 108, subsection 2. This subsection gives the shareholders the right to vote for the appointment of inspectors. In view of the fact that the shareholders constitute the "debtor" in such a case, we think they should not have the opportunity of outvoting the creditors as to who the inspector of the estate should be.

Section 110, subsection 2. This reads:—

A debt may be proved by delivery or sending through the post in a prepaid and registered letter to the trustee, a proof of claim in the prescribed form or to the like effect verified by the creditor as being true in substance and in fact.

That eliminates the swearing of an affidavit by the creditor on his filing his proof of claim. We think if you do away with the affidavit in connection with the filing of the claim it would lead to untold trouble. Certain groups of individuals might file claims that are not so, but they would probably back up at swearing an affidavit. Of course, we know that some people won't back up. I can't help digressing here to tell this story. A chap walked into his friend's office and inquired, "Are you ready for your game of golf?" His friend replied, "Wait a moment," and he started to sign his name to letter after letter without reading them through. The chap said, "My God! You don't mean to say that you let letters go out of the office without reading them?" Letters? I thought they were affidavits."

In his explanatory note to this subsection the draftsman said:—

This subsection is changed to remove the necessity of every claim being made in the form of an affidavit.

We think claims should be filed in the form of affidavits, because after all, I don't care how bad a man may be, if he is going to swear to an affidavit that is false he knows he may have to face a charge of perjury. If he knows he can file a claim and nothing will happen to him he will say, "I will see if the trustee or trustees will let my claim go through." We think the affidavit feature of the claim should be retained.

Section 110, subsection 5. This seems a bit drastic to the association. The subsection reads:—

The proof of claim shall state whether the creditor is or is not a secured or preferred creditor, otherwise the claim shall be deemed to be unsecured and not secured or preferred.

It is rather drastic to take away from the creditor his status if by reason of some error he puts his claim on an ordinary form and has not said, "I have a certain security or stand in a certain preferred class."

The CHAIRMAN: You do not see any possible correction to that? If he makes an error he is just out.

Mr. BULLEN: It says so. "The proof of claim shall state whether the creditor is or is not a secured or preferred creditor, otherwise the claim shall be deemed to be unsecured and not secured or preferred."

Hon. Mr. HUGESSEN: It is the "otherwise" that you object to?

Mr. BULLEN: Yes.

Hon. Mr. HAYDEN: If it stopped at the word "otherwise" it would be all right?

Mr. BULLEN: Yes.

Section 118. This is too drastic. There appears to be no good reason why a secured creditor should not get his costs of realizing his security or collection charges.

The CHAIRMAN: That is similar to the remark you have already made that a man's claim may be refused for some reason.

Mr. BULLEN: Oftentimes you will have a bank in this position. They say, "We have got an assignment of book debts here. There is evidently going to be a surplus, but we don't want to be bothered collecting these book debts. You have all the records of the debtor, you are winding up the estate, you are administering it. Collect these book debts and pay us the amount of our claims." That is what they will say to the trustee. This would eliminate what the bank pay for the collection. They should not be out that cost.

Hon. Mr. HAYDEN: Section 111 is retained in the bill. It reads:—

If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

That is a case where he realizes on the security itself, so I take it he would charge the cost of realization against the proceeds.

The next general section I want to come to is section 125, which deals with admission and disallowance of claims. It is submitted that the present sections dealing with this phase of bankruptcy are more satisfactory than this suggested section obligating the trustee to notify all creditors whose claims have been admitted. The trustee is generally not in a position either to consider or get advice in connection with all claims until quite some time after proceedings have started, and it would not be good practice to have him create an estoppel against himself by admitting a claim that later investigation during the bank-

ruptcy administration would indicate should be disputed. Little harm or inconvenience is done a creditor if he hears nothing of his claim, for he knows that if it is a bona fide claim, as by far the great majority of claims are, it will not be disputed. It is submitted that it would not be good practice to have the trustee lose his right to dispute a claim at any time before the first dividend is sent out.

Hon. Mr. HAYDEN: Why not?

Mr. BULLEN: Why should there be a time, Senator, when the trustee's right to dispute a claim is cut off?

Hon. Mr. HAYDEN: The creditor is recognized as a creditor in the proceedings and he has a right to vote. Surely that is an important right, and one that he should not have if he is not a creditor. So why should his status as a creditor not be determined as early as possible. If it appears later that there is any fraud in his claim, the fact that the trustee has admitted the claim would not prevent him from disallowing it afterwards.

Hon. Mr. HUGESSEN: Nor would the trustee be bound if a mistake had been made.

Mr. BULLEN: It sometimes takes a trustee many months to determine all claims. I can recall some stockbrokers' assignments in the city of Toronto where it took years to establish what were good and what were bad claims. If the trustee has to notify every creditor as soon as his claim has been admitted, the trustee might find himself in great difficulty later on if it should develop that some of these claims are not good. I do not think that any creditor who files a legitimate claim is injuriously affected by the present system.

The CHAIRMAN: There is the possibility that a creditor who received a trustee's certificate that his claim was admitted might sell that claim to another party, and later on that claim might be found to be no good.

Mr. BULLEN: Then the innocent purchaser or assignee of the claim would be before the court.

Hon. Mr. HAYDEN: I wonder if what is suggested here should not be applied in reverse? In other words, should the trustee not notify as early as possible every creditor whose claim is to be disallowed?

Mr. BULLEN: The trustee does notify every creditor whose claim is disputed.

Hon. Mr. HAYDEN: That should be done as soon as may be reasonable.

Mr. BULLEN: Yes. It would seem to be the better part of wisdom, I suggest, to notify as early as possible every creditor whose claim is disputed. Difficulty is bound to arise if the trustee, before he knows just what the situation is, notifies creditors that their claims have been admitted.

The next section that we comment on is 146, which deals with the discharge of the bankrupt. Under the present act a bankrupt applies for his discharge after the administration of the estate. A report is made by the trustee to the court, the creditors are notified, and the court discharges the bankrupt. That practice has had the test of some twenty years, and we have not heard much complaint about it. The draftsman seems to suggest that the difficulty with that practice is, that, first of all, the bankrupt does not know his legal status, does not understand that he can get a discharge; and, secondly, that the procedure is expensive. We suggest that these difficulties do not warrant the radical change proposed in the new section. We submit that, generally speaking, a man who gets as far as the bankruptcy court knows how he can get out, or what he should do to get out. Then, in my experience, the main item of expense in obtaining a discharge is counsel fees. If this section is included in the act the bankrupt will still have the opportunity to retain counsel, so that item of expense will not be eliminated. Again, the time for application suggested by the draftsman is much too short. The administration of a bankrupt estate of any size takes

much longer than six months, and in a great many instances the trustee is in no position to make the report that is required by the court as to conduct of the bankrupt or what his estate will pay. In the discharge of a bankrupt, according to my experience, the court is governed chiefly by the report of the trustee as to the conduct of the bankrupt. If the trustee makes a favourable report on the bankrupt, says that the bankruptcy has been brought about by conditions over which the bankrupt had no control, that he has given the trustee every assistance and has not committed any of the offences enumerated in the act, the court generally gives the discharge. We think that from the standpoint of the bankrupt and the trustee it is better not to have the act changed in the way proposed here.

I pass to section 160, which deals with decentralization of the work of the courts. This section proposes that the Registrars, clerks and prothonotaries of the courts having jurisdiction in bankruptcy, and their deputies and assistants be given the powers of a registrar. The powers of a Registrar are enumerated in section 167 of the bill; they are wider than the present powers of the Registrar and are very important. As far as Ontario is concerned, the suggested widening of jurisdiction would mean that the powers and duties exercised by the present Registrar at Osgoode Hall would be spread among a number of officials in some 47 counties and judicial districts. We think that would lead to a great diversity of opinion, judgments, orders, regulations and interpretations of the law; in fact, it is only common sense to expect that it would.

There is another feature. Bankruptcy work, as I said before, is more or less a special branch of the law, and has become centralized in or about the larger metropolitan areas where the wholesalers and manufacturers who distribute to the retailers are situated. This has resulted in certain men becoming specialists in bankruptcy law, such as Mr. Justice Urquhart, the Judge of the Bankruptcy Court of Ontario, and Mr. Gordon Cook, the Registrar at Toronto. They get a broad experience which a man in, say, Timmins, or L'Orignal or Fort Frances could never get. We think it would not be good legislation to decentralize the powers of the Registrar.

Then again, we have at Osgoode Hall, Toronto, a central registry, where all the records for the province are kept. One can go there and make a search with respect to any person or company, wherever located in the province. In that way there is less possibility of error than if a search had to be conducted at various places.

The CHAIRMAN: Might that objection be overcome by having reports sent from the various districts to a central registry office, where searches could be made?

Mr. BULLEN: That might be done, Mr. Chairman. I believe that is the practice in connection with surrogate matters. I am not sure, for that is not in my particular branch of the law, but I believe that wills and letters of administration and so on are sent from all over the province to Osgoode Hall. Mr. Sheard would probably be able to make a statement as to that.

However, this is a subsidiary point. Our main objection to that is that you have got there room for a diversity of action under the Bankruptcy Act, and it will not tend to have the uniformity that it should have.

The CHAIRMAN: Would Mr. Reilley care to answer the suggestion right now?

Mr. REILLEY: My comment, Mr. Chairman, is simply this. In the different provinces you have different ways of dealing with the matter. It is left to the Chief Justice of the province to appoint such registrars as he sees fit. In some provinces the Chief Justice appoints every registrar of the District Courts as a bankruptcy registrar, and in my thirteen years' experience I have never heard of any objections being raised that have been raised here to-day. Take Kamloops, Fort George, Prince Albert, all up through that country, in each case the

registrar of the Civil Court is registrar in bankruptcy, and they all do their work in a satisfactory way. I do not think for a moment that the registrars in Ontario are all numbskulls and cannot deal with bankruptcy as well as the registrar in Toronto or any other place. You have a registrar in bankruptcy sitting in Hull. There is no registrar in bankruptcy in Ottawa. There are some seventeen registrars in bankruptcy throughout Quebec. We have only one or the province of Ontario. The same thing obtains in Nova Scotia, New Brunswick, Manitoba, Saskatchewan—they have only one registrar in the centre of the province. In the other provinces where the work is performed by the registrars in the various judicial districts they get on all right with their bankruptcy work just the same as with their other work. If they can do all the work connected with the Criminal Code, and if they can do all the work connected with the Companies Creditors' Arrangement Act, which is bankruptcy and insolvency legislation, is there any reason why, with the help of the superintendent's office when they want information, they cannot do the work required of them under the Bankruptcy Act? Besides—and I say this as emphatically as I can—it is wrong in principle that any time any little matter in bankruptcy has to come before the court a solicitor should have to write from Fort Frances, Ottawa, or any other place and have it all done in Toronto.

Hon. Mr. HAYDEN: You mean there must be a better objection than just here geography?

Mr. REILLEY: That is one objection and a good objection, because the very contention made here to-day with regard to time and distance applies in this case. Suppose you want a stock order in a Fort Frances bankruptcy matter, you have to go a thousand miles to Toronto to get it. It is not reasonable. I do not admit for one moment that the officials throughout the various judicial districts of the province are not capable of handling these matters in bankruptcy just as well as other civil matters.

The CHAIRMAN: Will you proceed, Mr. Bullen?

Mr. BULLEN: I am wondering how under this bill anyone filing a petition in bankruptcy in Fort Frances would get it adjudicated if it was disputed. The judge goes around twice a year.

Mr. REILLEY: That would have to be worked out. There are other ways of doing it perhaps, but it is done in British Columbia. How is a petition filed in Prince Rupert or Fort George dealt with?

Mr. BULLEN: If it is disputed.

Mr. REILLEY: They deal with it there and apparently satisfactorily. I grant it is a serious matter in most cases, but surely it is not beyond the competence of a county court judge. In England, outside of London practically all bankruptcy is handled by the county court judges.

Hon. Mr. HAYDEN: When Mr. Justice Urquhart was before us the other day he said that the county court judges were capable of dealing with bankruptcy cases, and he was criticizing the bill because you were trying to push them on the Supreme Court judges.

Mr. REILLEY: To meet this objection I am quite willing that jurisdiction be given the county court judges, where the Supreme Court judges are not available.

The CHAIRMAN: Would it be possible to have the Attorney General in each province define the setup. He is a good judge of judicial ability.

Mr. BULLEN: It is left to the Supreme Court judge now.

Mr. REILLEY: We shall have to decide how to deal with it.

Mr. BULLEN: Thank you very kindly, Mr. Chairman and gentlemen. I do not intend to take up so much of your time.

The CHAIRMAN: We thank you, Mr. Bullen, for your assistance. We will now hear from Mr. R. O. Daly, K.C.

Mr. DALY: Mr. Chairman, I am representing the Investment Dealers Association of Canada. As you know, this is a country-wide organization comprising investment houses in Canada engaged in the distribution of government, municipal and corporation securities. Naturally when an investment house puts out an issue of securities it confidently expects or at least hopes that nothing will ever go wrong with that issue. It scrutinizes the present financial position of the company and its future prospects, and trusts that the issue will survive all the vicissitudes of time. But conditions change, management becomes inefficient, wars come, depressions come and the burden of debt gets too heavy for the company to carry. Then a financial reorganization is necessary. That is why the members of our association are particularly concerned in seeing that there is an efficient method of carrying out corporate reorganizations; and that is why also we are concerned with the provisions of the proposed statute.

My remarks will be directed purely to part 2 of the bill dealing with company reorganizations. As I understand it, this bill would transfer to the Bankruptcy Act and exclusively to the Bankruptcy Act the machinery for carrying out corporate reorganizations, and eliminate the existing machinery otherwise available, including the present machinery under the Companies Creditors Arrangement Act. Anyway, I take that to be the meaning of section 19, subsection 6, which reads:

Any composition, arrangement or settlement made by an insolvent person with his creditors generally otherwise than under the provisions of this Act unless the creditors unanimously agree thereto—

which of course is too much to be hoped for.

—shall be voidable by the court on the application of any creditor.

I have prepared a short statement, and I think I can be less discursive if I read it.

The principal reason for the proposed change appears to be the desirability of eliminating certain alleged abuses of the existing machinery under the Companies' Creditors Arrangement Act by virtue of which, in some cases, ordinary unsecured trade creditors have been defrauded, and of preventing compositions being carried out by companies or individuals with their ordinary creditors without the intervention of a trustee in bankruptcy to supervise the proceedings and to protect unsecured creditors against lack of full disclosure of the financial position of the debtor and against such other undesirable practices as may have arisen.

However desirable it may be to eliminate such abuses against ordinary creditors in relatively small trading companies, it is equally desirable to see that nothing is done to impair the machinery for carrying out corporate reorganizations in companies where the investing public is concerned and where there may be various classes of creditors, both secured and unsecured, as well as different classes of shareholders, both common and preferred. The members of the Investment Dealers' Association of Canada do not come into professional contact with the small trading company where there is no public investment interest but are primarily concerned only with those companies which have bonds of one or more classes and shares of one or more classes in the hands of the investing public. In the reorganizations of such companies it frequently happens that there is no proposal at all to cut down the principle amount of the claims of unsecured creditors. Hitherto reorganizations of such companies whose securities are in the hands of the public have been carried out as to the rights of shareholders under the arrangement sections of the relevant Companies

Acts of the Dominion and the Provinces and so far as bondholders are concerned under the trust deeds securing such bonds or under the Companies' Creditors Arrangement Act where it is necessary or desirable to take advantage of the latter statute.

The Companies' Creditors Arrangement Act has been in force since 1933 and is based on similar legislation which has been in force in England for many years. Its constitutionality has been upheld in the courts, and jurisprudence and procedure has been developed over the years both here and in England which it would be unwise to disturb. The procedure for obtaining the approval of the various classes of creditors is carried out under the supervision of the court and the reorganization before becoming effective must be approved by the court. In most cases the proposed plan of reorganization is worked out over a period of many months as a result of discussions between the company and committees, either formal or informal, of the classes of creditors, and shareholders concerned, the trustees under the trust deeds securing the various classes of bonds, and the investment dealer through whom the securities were originally distributed. The creditors have both the protection of the court and the guidance and protection of their own committees or representatives and have ready access to the financial records of the company. Fundamentally, therefore, there seems to be no objection in principle to a continuation of the present course of company reorganization under the Companies' Creditors Arrangement Act, and, in fact, there seems every reason why the present procedure should be continued in the case of reorganizations of the bond and share structure of companies whose securities are in the hands of the public. On the other hand, it is alleged that certain smaller companies whose creditors are for the most part ordinary unsecured creditors have used the provisions of the Act to defeat or defraud their creditors. If this is the case, it is submitted that the better procedure is to introduce amendments into the Companies' Creditors Arrangement Act to correct such abuses rather than to scrap the Companies' Creditors Arrangement Act and substitute for it the contemplated provisions in the Bankruptcy Act which might work in the case of small trading companies with no securities in the hands of the public but which would not be workable in the case of large companies where the rights of various classes of creditors, both secured and unsecured, may be involved. The Investment Dealers' Association of Canada would be glad to co-operate with the Superintendent in Bankruptcy and with others concerned, in an effort to devise such amendments as would be necessary to eliminate such abuses as have come to the attention of the Superintendent.

It is submitted, therefore:

1. For a great number of years, corporate reorganizations involving hundreds of millions of dollars have been successfully carried out, as to shares, under the provisions of the Companies Acts, and as to bonds, under the provisions of the trust deeds securing the bonds, and in many cases, under the Companies' Creditors Arrangement Act as to creditors, both secured and unsecured, where it has been necessary or desirable to take advantage of the provisions of that statute; for example, the recent reorganization of the Abitibi Company.

The provisions of section 19 (6) of the proposed Act appear to contemplate that the Companies' Creditors Arrangement Act will no longer be available for the purpose of carrying out a corporate reorganization and appear to be sufficiently wide even to cast doubt on the propriety of a modification of the rights of bondholders under the provisions of the trust deed under which the bonds have been issued.

Well-established legal procedure for carrying out corporate reorganizations should not be disturbed except for the most compelling reasons and then only after the most careful consideration. The Companies' Creditors Arrangement Act was not enacted for the purpose of dealing with the rights of unsecured creditors except where incidental to a modification of the rights of secured creditors such as

bondholders, but if companies have been using the provisions of the Act for the purpose of defrauding their unsecured creditors, the proper procedure would appear to be to amend the Act to correct such abuses rather than to eliminate an Act which has functioned smoothly and without criticism in the great majority of corporate reorganizations.

2. The proposed provisions of the Bankruptcy Act are not adequate to deal with the more elaborate capital structures of the larger companies where one or more classes of bondholders and one or more classes of shareholders and possibly unsecured creditors as well may be involved. The proposed provisions contemplate a general meeting of creditors and a valuation of their securities and such machinery could not possibly be applied in the case of a reorganization of a company having outstanding two or three classes of bondholders with the great bulk of the bonds in bearer form. Moreover, where corporate reorganizations have already been worked out through the careful studies and investigations of the various groups concerned, the proposed provisions involve unnecessary delay and expense.

3. That proposed Part II of the Bankruptcy Act should be limited to provisions calculated to correct whatever abuses may presently exist in connection with compositions with creditors (either before or after bankruptcy) where there are no outstanding securities, either bonds or shares, in the hands of the public which are affected by the reorganization scheme.

4. The new provisions relating to corporate reorganizations should be eliminated from the proposed provisions of the Bankruptcy Act and the machinery of the Companies' Creditors Arrangement Act should be maintained intact and concurrently in force (subject to such amendments as might appear desirable to correct any abuses against ordinary creditors) to deal, in conjunction with the Dominion and Provincial Companies Acts, with the capital structures of the larger companies where the interests of one or more classes of secured creditors may be involved. This would maintain the present practice under which the meetings of the various classes of creditors are called by the court itself and this practice would appear to be more desirable and more in the interests of uniformity of procedure than the calling of meetings of creditors by a trustee in bankruptcy as contemplated by the proposed provisions of the new Bankruptcy Act.

5. To the extent that abuses of the present machinery exist, the obvious procedure appears to be to introduce any essential amendments in the Companies' Creditors Arrangement Act rather than to repeal an Act which, in the main, has worked satisfactorily, and to replace it with legislation which appears to be neither necessary nor adequate to deal with corporate reorganizations involving an adjustment of the rights of various classes of bondholders and shareholders.

Respectfully submitted.

Hon. Mr. HAYDEN: Have you seen the suggested amendments of the Dominion Mortgage and Investments Association?

Mr. DALY: I glanced through them, Senator. I have not had time to study them carefully.

Hon. Mr. HAYDEN: Do they deal with and correct the points that you think should be corrected to make the Companies' Creditors Arrangement Act more effective?

Mr. DALY: I think they are very comprehensive. Mr. Reilley could tell us just what he is trying to correct.

Hon. Mr. HAYDEN: We can get that from Mr. Reilley.

Hon. Mr. CAMPBELL: Mr. Daly, I understand that you are definitely opposed to putting in this act provisions which would take the place of present provisions of the Companies' Creditors Arrangement Act?

Mr. DALY: Yes, sir.

Hon. Mr. CAMPBELL: That act, you say, should be left as it is?

Mr. DALY: That act should be left intact.

Hon. Mr. McGUIRE: Have you copies of your statement to distribute?

Mr. DALY: No, Senator, I have none available.

The CHAIRMAN: The statement will appear in the report of our proceedings.

Thank you very much, Mr. Daly, for coming here and giving us the benefit of your views.

Hon. Mr. HAYDEN: Mr. Terence Sheard is here and I understand is ready to answer questions, if there are any.

Mr. TERENCE SHEARD: Mr. Chairman, at the committee's meeting last Thursday we presented a draft bill to amend the Companies Creditors' Arrangement Act, and we said then that we would be available to-day if any member of the committee wished to ask questions about that bill. If there are no questions to-day, we shall be available whenever we may be required.

The CHAIRMAN: Thank you, Mr. Sheard. I do not believe we are in a position to question you about the bill to-day, but we shall notify you later if we wish to go into this.

The committee adjourned until 8 p.m.

The committee resumed at 8 p.m.

The CHAIRMAN: I think you are already introduced, Mr. Cryslar. Will you proceed.

Mr. A. C. CRYSLER (Legal Secretary, Board of Trade, Toronto): Mr. Chairman and gentlemen, as you probably know, I am the legal secretary to the Board of Trade in Toronto. The text of our brief is before you. If it could be agreeable to the committee I might save you some time to-night and perhaps make our real purpose even clearer if, instead of reading the brief, I ask that it be filed for reference later on and content myself with speaking to a few of what we think the more important parts of it.

The CHAIRMAN: All right.

Mr. CRYSLER: If you will refer to the opening paragraph on page 1 of the brief you will find that we tell you a little bit about who we are. We have a membership of some 4,000, principally drawn from Toronto and the surrounding district. We draw our membership from every walk of business and professional life, both large and small.

When Senate Bill A5 was received, we bore in mind that we have three classes of members particularly interested. First of all, unsecured creditors—business firms with trade accounts; secondly, secured creditors—such as insurance companies, trust companies, banks and so forth. In that connection our membership also comprises certain of the larger trust companies, whose duties are to carry out the large financial reorganizations which are encountered under the Companies Creditors' Arrangement Act. Thirdly, licensed trustees.

Under those circumstances we could not present anything to this committee which did not carry the approval of all those groups. We got together a small committee of the most outstanding gentlemen in those groups, and they prepared what is now before you. The brief was eventually approved by the Council of the Board of Trade and it is our submission to you.

Before going into the submission, I might mention that some of the things proposed in the bill we approve; some we do not approve. The things that we do not approve fall mainly into two classifications: No. 1, extension of the additional bankruptcy field into wider areas; No. 2, increasing the power of centralization of the administration of bankruptcy.

To guard against any possible misunderstanding, I should like at once to make it perfectly clear that we do not wish our remarks to be taken as in the

slightest reflecting on the present bankruptcy officials. You will see that in certain places in the brief we express our complete satisfaction with the manner in which bankruptcy is administered. We have certain reasons for not wanting to go further. Among those reasons are the consideration that the present officials just by the lapse of time cannot always be with us, and we do not know who may be put in their place. We hope of course that they will be equally able men, but we do not know. So when this act is amended we should like to feel that it will be on a rational workable basis, conforming to the underlying principles, and as thoroughly practicable an instrument, apart from the influence of personalities, as can be devised.

The first subject I should like to speak about in the bill is the basis of voting. You will find that that comes up in two places: the voting on special resolutions under section 2 (gg); and concerning the acceptance of proposals under section 15. The point we have in mind is the same in each case and I will cover it by speaking to section 15 only. This section will be found at page 16 of the bill. Starting at the third line, it reads:—

—with proven claims of twenty-five dollars or over, and holding three-quarters in amount of all such proven claims of creditors or class of creditors, as the case may be, insofar as the proposal affects any such class present in person or by proxy,—

We are not sure whether the qualification "present in person or by proxy" modifies only "holding three-quarters", or whether it also modifies "a majority in number." We think it should apply to both, and in our brief we suggest that the section be further clarified by simply repeating in each case the words "in person or by proxy." The clause would then read something like this:

A majority in number of all the creditors holding proven claims of twenty-five dollars or over, present in person or by proxy in voting, and seventy-five per cent in amount of those present in person or by proxy in voting.

The next point I should like to touch upon comes under the general heading of Changes in Wording. Of course no such revision of legislation as is contained in the bill can be carried out without many changes in wording, but there are two points in the bill on which there are a considerable number of judicial cases and quite a body of settled law. Those points are, first, the definition of "transaction" which is proposed in section 2 (jj) and the new section concerning avoidance of preferences mentioned in section 68. With regard to section 2 (jj) there will be a number of words, such as contracts, gifts, deliveries, settlements and so forth, no longer used. We are not sure whether the settled law that has been built up on those words, no longer to be used, will be carried forward to the use of the word "transaction." If they are the change would be good. We do not advance ourselves as a committee of lawyers, and therefore we do not profess to know the answer. We do ask, however, that the purely legal side of that matter be looked into, and that all necessary steps be taken to avoid any undue lack of settlement of jurisdiction and jurisprudence.

Many of the same points apply in section 68 of the bill, concerning avoidance of certain preferences. With regard to that section of the bill we notice that the principal difficulties indicated to date seem to have been the divergence of view on the necessity for concurrent or unilateral intent. Rather than using the new section 68 we would favour retaining the old section with simply an addition to that section providing that within the three months' period it would not be necessary for the trustee or creditors attacking an alleged preference to show concurrent intent.

I should like next to touch briefly on three of the new clauses under acts of bankruptcy. Section 3 (d) reads as follows:—

If in Canada or elsewhere he makes any conveyance, or transfer of his property, or of any part thereof, or creates any charge thereon, which would have the effect of defrauding, delaying or defeating his creditors or any of them;

We understand quite well the purpose of that section, but we are afraid that its terms are so broad that they may cast a legal cloud over what we would regard as legitimate transactions, and we suggest the advisability of legal scrutiny to see that no such results should follow.

Section 3 (i) reads:

If he makes any bulk sale of his goods under the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such bulk sale wherein the sale price will not be sufficient to pay his creditors in full;

The point there, gentlemen, is that we are told by trade creditors that very often one of their merchant outlets get into some sort of financial difficulty where it becomes apparent that they are not going to be able to pay their creditors in full and continue in business. Under those circumstances the cheapest and most efficient way of liquidating that business is a bulk sale under the provincial laws. Many people, in a wholesaler's business, would wish to see that privilege of effecting a bulk sale retained; and, therefore, we think that if a bulk sale implies with the provincial law, which has a reasonable safeguard, it should not be invalidated.

The last paragraph on which I wish to touch is 3 (1), which reads as follows:—

If he ceases to meet his liabilities generally as they become due, or fails to pay any particular debt or debts after repeated demands for payment.

The point there is "any particular debt". We understand that it has been an underlying principle of bankruptcy jurisdiction that it would not apply where there is only one creditor; he would have his means of remedy through the courts by way of judgment debtor proceedings. There is no question of insuring a rateable or equitable distribution among creditors. Where there are two or more creditors we believe it becomes necessary to follow the traditional practice of administration so that those creditors share equally.

I should like to deal next with petitions by shareholders, found in section (3) of the bill. If you refer to that section, gentlemen, you will see that sub-paragraphs (b) to (f) touch on matters other than insolvency.

Hon. Mr. HAYDEN: May I ask a question on section 4 (3)? Are you generally opposed to that section?

Mr. CRYSLER: We are generally opposed, sir. Those sub-paragraphs (b) to (f) touch on matters other than insolvency. For your convenience and reference I might cite a legal case which enters into it. The case is in *re Empire Timber, Lumber and Tie Company* 1920, 48 O.L.R., 193. The gist of that case, which runs up a considerable line of decisions, is that the Dominion Winding Up Act does not have jurisdiction over non-solvent firms incorporated otherwise than under Dominion laws. We suggest the constitutional feature might be examined in this proposed legislation to see whether there might possibly be danger of creating an enactment which could be a trap in some cases for the unsuspecting who do not realize the constitutional limitation.

Hon. Mr. HAYDEN: You are opposed then in that respect?

Mr. CRYSLER: In non-solvent cases.

Hon. Mr. HAYDEN: You are opposed generally to bringing in the field covered at present by the Companies' Creditors Arrangement Act?

Mr. CRYSLER: That is quite right.

Hon. Mr. HAYDEN: Then that covers the whole point.

Mr. CRYSLER: That covers the whole point. As regards sub-paragraph (a) of section 4 (3), I heard that discussed this morning at some length. It is all summed up under the danger of "the one-share artist who could threaten the life out of a company with one share."

Section 4 (11) provides by silence for the elimination of custodian. We are agreeable to that. As we understand bankruptcy proceedings there is not a sufficient function left for the custodian to justify the continuance of that officer. Likewise, we approve the provision for the petition against the estates of deceased persons. There is, however, a matter that I should like to draw to your attention. Section 5 of the bill commences to read as follows:—

Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition—

We understand the meaning of that paragraph, but we think that it would be advisable if some additional wording was put in to insure that the clause is only operative when the estate is actually insolvent. There should be a few words there to complete the intention.

Hon. Mr. HAYDEN: Then you approve of that section?

Mr. CRYSLER: Generally, we approve of that section, subject to clarification. We also approve of the clarification of the powers of the interim receiver.

Dealing with the question of assignments, which we find in sections 9 and 10 there are a few comments to be made. Section 9 (2) as you will see provides for assignments by corporations other than for debts. The remarks that I made a moment ago in connection with petitions by shareholders, and in relation to the constitutional feature, can be taken as applying here again, and I do not need to repeat them.

Hon. Mr. HAYDEN: This deals more with winding up.

Mr. CRYSLER: Yes, that is correct, sir.

Hon. Mr. HAYDEN: You think the winding up provisions should remain as they are?

Mr. CRYSLER: Quite, sir. We have the same view as to the Winding Up Act as to the Companies' Creditors Arrangement Act, namely, that they should remain as they are. The last four lines of section 9 (3) reads as follows:—

and in the case of a corporation also a list of the shareholders showing the number of shares of stock subscribed for by each shareholder and the amount of capital paid up by each such shareholder.

Hon. Mr. HAYDEN: Let us stop there. This whole section deals with assignments. Or do you think it deals with more than that?

Mr. CRYSLER: I think, sir, the application is a little more than winding up, because I would think that this section would continue to have application in the event of providing in the place of the present sections 11 to 24 for composition before bankruptcy in the case of trading firms. I think it would still have a connection there. Our point in regard to section 9 (3) is that it is a very awkward thing for a trustee to supply that information in connection with large estates in the time available. We rather think that in the draftsmanship of the act that feature may have been overlooked. We believe that those four lines should be deleted.

Hon. Mr. CAMPBELL: What particularly do you say is burdensome to the trustee, the supplying of the information to the shareholders?

Mr. CRYSLER: Yes. We have had trustees tell us that with large corporations take for instance a mine, with thousands of shares widely distributed—the list of shareholders might run into many pages.

Hon. Mr. HAYDEN: And the list might be 50 to 60 per cent inaccurate, because there would be street certificates?

Mr. CRYSLER: Yes. We think that possibly the draftsman overlooked that there is that type of company where this work would run up into a very considerable item of expense. And above all, perhaps no practical purpose would be served in a no-dividend estate.

Hon. Mr. CAMPBELL: Is the proposed amendment not obviously intended to show the amount of capital paid up and any unpaid capital which would form part of the estate?

Mr. CRYSLER: Yes. We believe that the trustee should investigate the matter and acquire all this information in due course of administration. Our only question is as to the advisability of obliging him to go to the trouble and expense of compiling it all.

Section 9 (6) relates back to what I said a moment ago about bulk sales. We hope that that section will be carefully studied and either dropped or at any rate not put into the act in such a form that it would have the effect we fear.

Section 10—Application of summary provisions where a trustee cannot be found to act—is of course approved by us.

At this point, rather than speaking extemporaneously on compositions, extensions and schemes of arrangement, I would like to read a few paragraphs from my brief before you, commencing at the middle of page 3:—

Sections 11 to 24 deal with compositions, extensions and schemes of arrangement. They involve the introduction of two important features. Provision is made for compositions, etc. without bankruptcy and there appears to be an intention to bring under the Bankruptcy Act all forms of insolvencies, reorganizations, liquidations and winding-up proceedings.

Hon. Mr. HAYDEN: May I interrupt you, Mr. Crysler? We have your general view, that you are opposed to the inclusion in this Act of proceedings relating to matters other than bankruptcy, such as proceedings under the Companies' Creditors Arrangement Act.

Mr. CRYSLER: Yes.

Hon. Mr. HAYDEN: It is up to us to consider sections that deal with that, and your brief indicates them?

Mr. CRYSLER: Yes.

Hon. Mr. HAYDEN: I was wondering why it should be necessary to read the brief, unless you want to wield the sledge-hammer twice. You are opposed generally to the incorporation of the provisions that you have indicated, and it is not going to do us any good to look at the particular sections now.

Mr. CRYSLER: I understand. I might explain that in the following parts of this brief it is not so much the sections we discuss as the principles upon which we base our opinion. I dare say that these principles are not new to any of you gentlemen. I have no particular wish to read the paragraphs, but if you desire me to read them I will do so.

The CHAIRMAN: I do not think these paragraphs need be read now.

Mr. CRYSLER: In that case, Mr. Chairman, I would like to skip over to page 5 of the brief, dealing with the Companies' Creditors Arrangement Act.

Hon. Mr. CAMPBELL: Mr. Chairman, for the sake of continuity I wonder if it would not be well to have included in the evidence of Mr. Crysler that part of his brief which he proposed to read.

Hon. Mr. HAYDEN: The whole brief is being put into the record.

Mr. CRYSLER: I would like to read the three short paragraphs on page 1 concerning the Companies' Creditors Arrangement Act:

The Companies' Creditors Arrangement Act was passed to enable the reorganization of corporations where classes of securities are involved. It has proved a valuable instrument for realization by investors and it is most important that it be retained for that purpose.

However, the provisions of the Companies' Creditors Arrangement Act were wide enough to permit ordinary trading compositions, extension and schemes of arrangement under it and, in the years before the war when insolvencies were more numerous than now, certain defects, principally of a procedural character, did become apparent from the point of view of unsecured creditors in proceedings taken by purely trading debtors under that Act.

It is necessary that the Act be amended to guard against a recurrence of these defects and prevent its use for all practical purposes where traders' interests are primarily involved. It is understood secured creditor interests are preparing suggested amendments to accomplish this purpose.

I wished to read that so that I could say that since the brief was prepared we have had an opportunity of reviewing the amendments prepared by the Dominion Mortgage and Investments Association and presented to this committee, and we are quite satisfied that those amendments carry out the purpose which it was said that they would.

The next group of sections affect the duties of the Superintendent of Bankruptcy. Section 39 (4) (g) provides that he shall audit and examine trustees' accounts. Section 91 relates to release of trustee. Section 82, statement of receipts and disbursements; and section 83 (1) (c), notice of final dividend. I heard those four sections discussed at considerable length this morning, and I think no good purpose would be served by repeating what has been said. There was some discussion as to the inconvenience involved in having to furnish the Superintendent with all the material required. I had a talk subsequently with one or two gentlemen who carry on the business of trustees, and I understand that, broadly speaking, the practice is for the trustees to supply the Superintendent with statements of their receipts and disbursements; and, if he requests it, they supply him with further detailed information in the form of vouchers. However, it is said that when the trustee takes his statement of receipts and disbursements to the court, the practice, at least in Toronto, is to take the actual vouchers there for the inspection of the court, and what ordinarily happens is something in the nature of a spot check by the court. Hence the statement that cratesful of documents would have to be shipped if all those original vouchers were required by the Superintendent in order to make a spot or full check as the court now does.

Hon. Mr. HAYDEN: Generally speaking, wherever there is any decision to be made on the accounts or fees of the trustee, you think the reference in the first instance should be to the court?

Mr. CRYSLER: We do, sir. That brings me to the next point that I wish to make. In the courts you have the protection of forms of judicial procedure which have been built up over the ages to secure the best justice known to man. I would not for the world suggest that an administrative official would give anything but the best possible justice, but my point is that he does not follow

rough the procedure of the court. There is an inherent difference between court procedure and administrative procedure. For that reason we believe that the passing of accounts, the release of trustees, and so on, should remain under the jurisdiction of the courts. I am told that especially in large estates there is most invariably considerable oral argument to support the statements, and that if there was no opportunity to make oral argument there would almost inevitably be a somewhat protracted exchange of correspondence in its place.

Hon. Mr. HAYDEN: Do you not think the stronger ground is the one you stated first?

Mr. CRYSLER: From the point of view of immediate purposes, yes sir. One does not want to get too far afield in large questions, but we all know the tendency towards administrative procedure rather than court procedure; and I think those of us who are trained in the law and have a knowledge of the history of administration in courts and so forth, are rather of the view that the other that tendency develops the further you tend to get from abstract justice. I am not so sure that in the long run the second point may not be as strong as the first one, sir, though of course it is not as immediate.

In regard to the Superintendent there are certain other references in sections (3) and 78 (4). We believe that these should be deleted. The inspectors are the governing body of the estate; and our thought is that they should do the work and that it is probably not the most suitable function for the Superintendent to intervene in. After all, he is in Ottawa and is likely to be less closely in touch with some aspects of the situation than those officials who are on the spot.

Hon. Mr. CAMPBELL: I do not know why that amendment is suggested, but might it not be because the larger creditors are represented by the inspectors and that many small creditors feel that, although money is available for distribution by way of dividends, they are unable to get the inspector or trustee to make a distribution at a particular time? If this amendment were carried the smaller creditors could communicate with the Superintendent and ask him to intervene and see that a distribution was made. After examining the affairs of the estate he might come to the conclusion that the inspectors representing the larger creditors were improperly withholding the distribution for some purpose.

Mr. CRYSLER: I can see that possibility.

Hon. Mr. CAMPBELL: How would the amendment interfere with the set at? It seems to me that the Superintendent would not override the decision of the inspector or trustee except in an extreme case.

Hon. Mr. HAYDEN: The court could do that just as well as the Superintendent, could it not?

Mr. CRYSLER: Would you please refer to subsection 208 (d) of the act? It is says:

Section 208 (d). Any person who, having been appointed a trustee without reasonable excuse, fails to observe or to comply with any of the provisions of this act, or fails duly to do, observe or perform any act or duty which he may be ordered to do, observe or perform by the court or the superintendent—

The question the wisdom of that provision insofar as the superintendent is concerned. The court order is issued as a result of judicial process, and if the trustee does not happen to agree with that order he has his remedies in appeals through judicial process. There is not the same protection either at the beginning or the ending of an administrative order issued by an administrative official. I doubt whether that is quite a fair position in which to leave the trustee in bankruptcy. As you will recall the discussion this morning, at the time we prepared our statement we were unable—as Mr. Bullen was unable—to find any

right of appeal from the superintendent's decision provided in the bill. Of course we heard Mr. Reilley say this morning if that was the case he would be very happy to have it changed. In any event, sir, I am not inclined, and I do not think my members are inclined, to raise a very important issue concerning the superintendent's right to intervene to the extent of interim dividends. We mention it, but we do not regard it as a very important point among the amendments.

Carrying on with a group of kindred sections dealing generally with the trustee, I would just refer again to the fact that as the act stands now there is this section 208. (d). There is apparently a suggestion that the trustee should take his receipts and disbursements to the superintendent and get his discharge from the superintendent. As I have said, we were unable to find a right of appeal, and we do not think that would be a fair situation in which to leave the trustee. Our preference would be for these matters to be left with the court where they are now. But we do believe the trustee should have the right of appeal if matters are to be left to the superintendent.

I come now to a few minor matters in connection with the trustee. You would please refer to section 39, subsection 7 which reads:—

The superintendent may give such instructions to trustees regarding the estates under their administration as may be deemed necessary and expedient.

We do not know exactly the purpose of that. It is perhaps a little broad. There may be some specific purpose that the superintendent has in mind, and perhaps it should be clarified. For instance, relating to what I have just said, supposing that the trustee should get instructions to pay an interim dividend before he has settled the income tax for which the estate is liable. It may be an extreme instance of what might happen, but you could see the difficult position in which the trustee might be placed. We suggest he should not be left open in such a difficult position.

Section 40, subsection 3 reads:—

No trustee shall be bound to assume the duties of trustee in matters relating to assignments or receiving orders or to compositions, but having accepted an appointment as such he shall until released or another trustee is appointed in his stead perform the duties required of a trustee under this act.

You will notice that that falls under the general heading of administrative officials. It follows the assignment and we think there should be some more or less definite time limit pause there to give the trustee an opportunity to at least make a superficial examination of the estate to determine whether he wants to take it on. You will notice on page six of our brief we suggest that the trustee should not be bound to act until following his acceptance he has been confirmed at the first meeting of creditors, the point being that that would give him an opportunity to investigate.

Section 44, subsection 1. We are inclined to believe that this is somewhat impracticable in so far as theft insurance is concerned. Trustees tell us that sometimes they cannot buy such insurance for certain types of assets. Sometimes they get heavy equipment, which could not be possibly stolen, and they consider it a waste of money to insure it.

Hon. Mr. HAYDEN: You favour—

Mr. CRYSLER: Leaving that out.

Hon. Mr. HAYDEN: Supposing the inspector wants it?

Mr. CRYSLER: Then let each estate be dealt with according to its merits and whether or not the insurance can be obtained.

Section 44, subsection 3—moneys to be deposited in the bank. The last two lines of this subsection read:—

All payments made by a trustee shall be made by cheque drawn on the estate account.

One should like to draw attention to the fact that cheques are not legal tender. One might possibly get into difficulties there. Then again, trustees have told me that quite often they get in positions where they go out to small towns and have to hire from three to six or eight persons for a day to take stock, and so on, and it is more convenient to pay them out of hand with cash. Trustees feel they would be seriously inconvenienced if they could only draw cheques on the estate account.

Now section 44 (5). This is the books and records section, and it was discussed so fully this morning that I shall not take you over the ground again, but I think I can clarify something about it. The difficulty of the present section is that it seems to read as though requiring separate accounts in the book of records. Here is why we do not like that. Very often in the early days of the bankrupt estate the trustee has to advance his own money and obviously he must show where the money is.

The CHAIRMAN: That would apply to the previous section.

Mr. CRYSLER: Yes. By allowing the trustee, as at present, in most cases to keep track of estate moneys in a separate ledger account in his own general books you avoid a multiplicity of books to keep up. One trustee in Toronto told me he had some hundreds of estates, and if he had to keep his accounts separate in the record books he would have to have some hundreds of sets of books. This trustee balances his books monthly, and he said to me, "My goodness! I don't want to have to balance all those sets of books monthly, I presently balance my own books. There is a separate sheet for each estate, the job is done, and I know I am all right." I mention that as it may clarify some of the discussion of this morning. Another trustee pointed out that occasionally he had to deal with what is termed a multiple estate. This was instanced this morning by Mr. Bullen in reference to the Canadian Department Stores. You cannot possibly have your books of account in the trustee's office if the estate continues in operation, for they must be out in the branches. All the trustee can have are the controlling accounts. We mention those things in the hope that they will be taken into consideration.

The CHAIRMAN: Would you be in a position to suggest a remedy?

Mr. CRYSLER: The old section, sir. We do not know of any case where it has substantially gone wrong. If it has gone wrong in some particulars, perhaps those particulars can be corrected without the whole body of the section being changed.

Dealing with the next two or three subsections, 6, 7 and 8, in certain circumstances the records will go to the superintendent. We question the advisability of that for this reason. Trustees say that for a year or two after the estate is closed they are forever getting inquiries, and they need the records in order to answer those inquiries. Then there is the other angle. I think one must be fair with the trustees. If they pass away their records, and somebody could charge wrong practice in some respect, where are the trustees when their records are gone? I suppose the answer is they could be returned, but after all I think most people in the matter of protection prefer to keep their means of protection in their own hands. I do not know why trustees should not be permitted to do that.

Section 53 (1). This has to do with persons claiming property in possession of the bankrupt. The subsection provides that a trustee may waive the filing

proof of claim. We question the advisability of this for two reasons: One. It may lead to loose practice. Two. It does not leave a permanent record of the disposition of the claim, as to why it was so disposed. We think the proof should be filed.

Section 53 (2)—Disposal of Filed Claims. There, as you will notice, the trustee is allowed a certain time within which to admit or dispute claims. We think the fifteen-day period should be increased to thirty days. The trustee should normally have thirty days to complete his investigation. Then as regards the claimant, there seems to be practically a statutory adjudication of his claim, and by reason of distance he might almost lose his claim if he did not put it in within fifteen days. We think this period also should be lengthened to thirty days.

Section 53 (5)—Trustee not liable for costs or damages. This subsection was discussed this morning. We believe the court should have power to award costs where a creditor is rather obviously unnecessarily put to the expense of establishing his claim.

Section 63 (1). Another question arises in this subsection which deals with proceedings by creditors when the trustee refuses to act. When we first looked at that subsection we were prepared to regard it favourably; on second thought we consider it of doubtful value. First of all, there would have to be a legal transfer of title from trustee to the creditor, and we rather doubt whether if that was done there is sufficient protection for the other creditors interested receiving their full share. For those reasons we doubt the advisability of that subsection.

I come now to assignments and preferences. Section 69 (2) deals with protected transactions. There is a feature we do not like. It seems to place a permanent onus of proof on the person supporting the validity of the transaction. If that were limited to the three months' period for the avoidance of transactions where preferences have occurred. I do not know that one would quarrel with it very much; but it does seem to us rather unreasonable that the person supporting the validity should bear the onus of proof, whereas under normal legal process the onus is the other way around. For that reason we would much prefer the former section 65. We think it should be retained rather than the new section should be adopted.

The matter of dividends is covered by sections 87 and 88 (2). Whether it is contemplated that these sections would remain if sections 11 to 24 go, I do not know. At any rate we should like to comment that once creditors are paid in full the function of bankruptcy is complete. Then the assets of the corporation should be given back to the corporation, as there is no provision for distribution to shareholders. Following that the corporation would then have the usual processes under the Companies Act or the Winding Up Act for reducing its capital and carrying on, or having itself wound up and assets distributed. At any rate we question whether bankruptcy should deal with these matters, once the creditors have been paid in full. They should, we think, go to other remedies.

Hon. Mr. CAMPBELL: What practice is followed now with respect to that sort of thing, assuming there is a petition in bankruptcy and that the trustee finally sells the assets and makes a distribution to the creditors and has on hand say \$100,000?

Mr. CRYSLER: Well sir, I asked one trustee what light he could throw on that practice, and, although he is a man well up in years now, he said that there was only once in his life where he met that situation.

Hon. Mr. CAMPBELL: Do you mean where he had a surplus?

Mr. CRYSLER: Where he attempted to handle a surplus. He did not say that there were no cases where he had surplus to hand back to the corporation, but

only in one instance did he have a surplus and attempted to distribute it to the shareholders. Then in the distribution to the shareholders he did not attempt to proceed under the Bankruptcy Act; he worked entirely apart from it. He did not say under what he did work, but one would obviously think it would be to get consent from the shareholders.

Hon. Mr. CAMPBELL: I wonder if Mr. Reilley could answer that question in a practical way? What happens, Mr. Reilley, in a case of that kind?

Mr. REILLEY: I really do not know myself. In 99 cases out of 100, in fact, in all the cases that do arise, you get to the point where the assets are being sold and there may be something left—some small asset or money—you have not got any corporation or anybody to which you can hand back the money.

Hon. Mr. HAYDEN: The corporation is still there?

Mr. REILLEY: It may not have cancelled its charter with the Secretary of State, but you will not find in any of those cases that there are officials to carry on the functions of the corporation, and you find that the money is there at least in funds; there is no one to receive it. It is turned in to me as an undistributed asset, and we have a good deal of it lying in the Receiver General's office today, because there is no company to claim it or do anything with it. My idea in that instance was not to add on some bankruptcy function, but merely to give the trustees the right to go ahead and give this money to the people who are entitled to it when it is apparent that otherwise they are not going to get it. That is the sum and substance of the whole idea. But I do know that at the present time there is a good deal of money lying in the Receiver General's office belonging to companies that do not function and there is nobody to claim it and divide it among the shareholders.

Mr. CRYSLER: Could I address a question, Mr. Chairman? I have been rather interested in what Mr. Reilley has said. Frankly that aspect had escaped going to ascertain the shareholders entitled to it? I would be inclined, on my own attention: if there is no official way to hand the money over how are you on your own initiative, to withdraw the point if I could be satisfied that there is a feasible way of carrying out Mr. Reilley's proposition?

Hon. Mr. HAYDEN: You might be able to find a list of shareholders in the company's books; then you could check with them and ask them to produce their certificates to show whether or not they are still shareholders. I can understand that procedure might be possible, and yet you would not be able to find a board of directors that would function.

Mr. CRYSLER: Frankly, we were not thinking of the problem Mr. Reilley has mentioned. We were reviewing this section not at all apart from sections 11 to 14; and that fastened our attention on it, and we did not approve of it as applied to companies where there was a corporation that could be found, and where there were sizeable assets. We did not consider the point that Mr. Reilley has brought up. There may be something to it.

Hon. Mr. CAMPBELL: If a company has not applied for its discharge within sixty days after distribution of the assets the Superintendent could direct them to be distributed amongst the registered shareholders.

Mr. CRYSLER: That would seem to answer the problem.

Mr. REILLEY: May I be permitted to reply on that question. I have never at known a corporation to apply for its discharge.

Hon. Mr. CAMPBELL: I can see the necessity for having some procedure, because the money properly belongs to the shareholders; all the creditors have been paid and there is no reason why it should be held by the Receiver General.

Mr. REILLEY: Not at all.

Mr. CRYSLER: As far as we are concerned, if there is a reasonable time limit fixed in which the corporation may apply for its money, then I believe we would be satisfied to withdraw our present objection.

In connection with release of the trustees, there are certain results which fall from that provision. Section 92 (1) would result in undisposed of equities in real property automatically vesting in mortgages. Our view is that it goes a little too far; that property sometimes has an increased value, which would be to the benefit of the creditors, and we do not know just why the bankrupt should get it back. Section 92 (2) automatically vests in the bankrupt certain unrealized property. Again we do not know just why he should get it back.

Hon. Mr. HAYDEN: What are you going to do, when the trustee is released?

Mr. CRYSLER: Is there not a section somewhere in the act which provides to the effect that even though the trustee is released, if something later on should arise in that estate, he is still trustee for that purpose?

Hon. Mr. HAYDEN: You mean de facto?

Mr. CRYSLER: Yes, de facto.

Hon. Mr. HAYDEN: I should think that is only to cover matters where a title or clearance is required.

Mr. CRYSLER: We have in our mind the question of real estate, where you have property subject to mortgage and there is no market for it, or so little that can be realized that nothing is done with it. Then there comes a land boom, and it does not take much increase to widen that spread.

Hon. Mr. HAYDEN: But surely there should be some end to the period of bankruptcy, in which time the trustee is released and the creditors have taken their bit, whatever it is. The bankrupt should be able to emerge and gather up whatever tatters are left. Now if you are going to hang some kind of tail on to him, that anything that is left is going to be held for all time for the benefit of the creditors in case there may be an appreciation in value, you are going to make bankruptcy proceedings unending.

Mr. CRYSLER: I can see the danger of that. Of course what we have to say here has nothing to do with the bankrupt getting his discharge; that is a separate matter.

Hon. Mr. HAYDEN: It may occur without the releasing of the trustee.

Mr. CRYSLER: Our people felt rather definitely that these assets should exist for the benefit of the creditors if they ever have any value.

Hon. Mr. HAYDEN: You mean for all time?

Mr. CRYSLER: Yes. Although, frankly sir, I do not believe there is much in it from a practical point of view.

Hon. Mr. HAYDEN: I do not think there is much in it and I think you would make bankruptcy proceedings, as far as the Superintendent's function is concerned, unending.

Mr. CRYSLER: I can see that point. I do not think my principals would be inclined to press that matter.

I wish next to deal with two subsections, 92 (3) and 92 (5). We rather definitely feel that those items should be disposed of on the direction of the court, rather than by return to this person or that; the court should definitely instruct what should be done with them.

Next, meetings of creditors, 93 (1). There is a small point of interpretation there that we should like to draw to your attention. The last sentence reads: "Provided that the official receiver may, when deemed expedient, authorize the meeting to be held at the office of any other official receiver." To our mind it is a necessary implication that the official receiver could only hold meetings in his own office in his own locality. Now if there is anything

to that apprehension, we think some clarification should be inserted to make it clear that the official receiver can instruct the holding of meetings otherwise than in his office.

Section 96 (3) has rather a delicate aspect. In cases of a tie vote the chairman has the casting vote, and often at the meeting the chairman will be the official receiver. In effect he would be put in the position of choosing a trustee by his casting vote. There is one way of looking at it, that as a court official he should not take that responsibility; or, perhaps it is not good for a public official in the position of dividing up business. To avoid this, it is suggested that the following words be added to the subsection: "In the case of a tie vote, on the appointment or removal of a trustee, the chairman shall not have a casting vote, and the trustee presently appointed shall continue in office." We think that might get the official receiver out of the somewhat awkward position, and at the same time be a sound way of dealing with such matters.

The next section upon which I wish to touch is 100 (1). We think that all proofs of claim should be filed before the meeting. The section says, before the meeting or before voting. If they are not filed before the meeting it does not give a trustee a chance to check them.

Section 105 (3) (i) says that any person associated with the bankrupt may vote. That provision strikes us as being rather broad. We do not know what it means.

Hon. Mr. HAYDEN: Mr. Bullen suggested retaining the old section. Would you be agreeable to that?

Mr. CRYSLER: We would agree to that, sir.

Section 108 (2) should have shareholders struck out, partly in conformity with our view that sections 11 to 24 should go, and partly because fundamentally the shareholders should not be voting for a trustee; that is a creditor's function.

Section 108 (7) reads:

A majority of all the inspectors appointed shall constitute a quorum for a meeting which may be called by the trustee or any inspector as and when he deems necessary on three clear days' notice to all of the inspectors unless notice is unanimously waived or the consent to hold such a meeting be given in writing by an absent inspector.

We think it rather inadvisable to put in the hands of an inspector the power to delay meetings three days. When that matter was discussed this morning reference was made to the arbitrary trustee, and the giving to one inspector a chance to call the meeting. We should like to draw to your attention the fact that, there may be a trustee here and inspectors there, and the inspector may be a law unto himself. We are told that sometimes exists. To guard against that we think the section should be modified along the lines which I have mentioned.

Hon. Mr. HAYDEN: You think three days is too long a notice?

Mr. CRYSLER: To block the calling of a meeting. Sometimes the purpose of a meeting has passed in three days.

Hon. Mr. HAYDEN: You mean that an inspector will waive notice of a meeting?

Mr. CRYSLER: Yes; he blocks the meeting; he will not waive notice. He can hold it up for three days, and there is some rare dickering in these estates.

Hon. Mr. HAYDEN: If three days is too long perhaps two days would be satisfactory.

Mr. CRYSLER: Any lessening of the time would be helpful.

Hon. Mr. HAYDEN: You think three days is too long a notice?

Mr. CRYSLER: To allow an inspector to block the calling of a meeting. Sometimes the purpose of the meeting is over in three days. Occasionally rardickering goes on in those estates.

Hon. Mr. HAYDEN: If three days is too long, why not make it two days?

Mr. CRYSLER: Any shortening of the time would help.

Section 108 (14), inspectors' fees. Trustees, especially those who handle large estates, tell us that the remuneration of inspectors is really inadequate for the services that they are expected to perform. So far as Toronto is concerned, we think that the scale of fees should be doubled; and if any further increase is necessary, that should be left to the court.

Section 110 (2) and (7) contemplates doing away with the swearing of proof of claim. That was discussed this morning, and I think it is sufficient for me to say that if these amendments were adopted they would let in a lot of loose practice.

Section 110 (5) was also discussed. We are in favour of the deletion of all the words from "otherwise" to the end of the subsection, but we suggest that the words "and, if so, to what extent" should be substituted therefor. We think that a creditor should not only say whether he is secured or not, but should state that portion of his claim which is secured. Often there are claims which are not wholly secured.

Section 118—No creditor to receive more than 100 cents on the dollar. That was dealt with quite effectively this morning. We think it should be made clear that secured creditors may recover the cost of realizing their security.

Section 121—Postponement of wage claims of relatives. We agree with what was said this morning and think the old section detailing the relative affected should be retained. At our meeting more than half of the men skilled in this work could not agree on what a third-degree relative was. We fear that the proposed amendment would give rise to a good deal of misunderstanding.

Section 125 (1) requires the trustee to notify all creditors whose claims have been admitted. We cannot see that this is necessary and we think it should be deleted.

Hon. Mr. HAYDEN: There was a suggestion this morning that notification of disallowance should be sent as quickly as possible.

Mr. CRYSLER: That would overcome one aspect of the difficulty, namely the time and trouble of sending out notices to all creditors whose claims have been admitted. But there is another aspect which was not discussed this morning. In the early stages of a bankruptcy, before the trustee has had adequate opportunity to investigate, he should not be in the position of having to admit claims or dispute them and force issues. Sometimes, and especially in large estates, it takes a long time for the trustee to satisfy himself as to just what claims are justified.

Hon. Mr. HAYDEN: This subsection simply says "The trustee shall as soon as may reasonably be done examine every proof of claim filed".

Mr. CRYSLER: Oh, I am sorry; I thought there was a time limit on it.

Section 125 (2) and (3) and following subsections are approved by us. These subsections enable the trustee, without taking a stand, to require that doubtful claims be proved.

Section 126 clarifies and revises priority of claims. We like this too.

Section 133, duties of bankrupts. Generally, we approve of this, but there is one point with which we do not agree, and that is the latter part of paragraph (e):—

Where the affairs of the bankrupt are so involved or complicated that he cannot himself reasonably prepare a proper statement of his affairs, the Official Receiver may, as an expense of the administration not

to exceed twenty-five dollars, authorize the employment of some qualified person to assist in the preparation of the statement.

We doubt whether \$25 is at all an adequate figure, and we question whether any figure should be mentioned.

Hon. Mr. HAYDEN: Perhaps "a reasonable amount" would be better.

Mr. CRYSLER: Yes. The cost might run into hundreds of dollars, or even conceivably into thousands of dollars.

Hon. Mr. CAMPBELL: As in the Abitibi case, for instance.

Mr. CRYSLER: Section 137 (4)—Examination of bankrupt at meeting. The provision for the evidence of the bankrupt being taken down in shorthand is impractical. Many trustees would not be able to find a competent stenographer when required. We doubt whether that subsection should be retained.

Section 143—Questions must be answered. That section in its present form appears to us to be rather unfair to the bankrupt.

Hon. Mr. HAYDEN: I was waiting for your comment on that.

Mr. CRYSLER: May I read the comment on this in our brief?—

The provision in section 143 that evidence taken on examinations may be given in evidence in subsequent proceedings should be limited to evidence given at the formal examination mentioned in sections 138, 139 and 142 (but not including examinations before the Official Receiver), of the Bill. It would be unfair to give in evidence, evidence taken at an informal examination.

We are told that often the best ends are achieved by a very informal examination, which actually is just a chat in the Official Receiver's office. We do not think it would be fair to report that and give it in evidence against a person. If that practice were followed a few times, it would probably result in bankrupts becoming very reticent in those little chats.

Hon. Mr. HAYDEN: It is a very dangerous principle to compel a person to answer questions and afterwards prefer a charge against him and read his answers in an effort to convict him.

Mr. CRYSLER: We agree, Senator. As stated in the brief, we would go so far as to support that if it were confined strictly to the evidence given at the formal examination mentioned in sections 138, 139 and 142, but not including examinations before the Official Receiver. The reason for that is that while we thoroughly subscribe to the principle you have mentioned, we also fully appreciate the kind of persons that trustees in bankruptcy often have to deal with, and the difficulty of getting any information out of them—indeed, in many cases it is almost impossible to get any information.

Hon. Mr. HAYDEN: This section is not on the point of getting information.

Mr. CRYSLER: I see your point, sir. That is right.

The CHAIRMAN: It has to do with the further use of the answers.

Hon. Mr. HAYDEN: Yes.

Mr. CRYSLER: Quite frankly, sir, we would not go so far as to support that section, but we presume that the draftsman had some cogent reasons for putting it in and we would withdraw our opposition if the section were confined to the formal examination.

Hon. Mr. HAYDEN: It is not entirely new.

Mr. REILLEY: It is almost exactly as in the present act.

Hon. Mr. HAYDEN: That does not make it any better. I do not like it, I am only one.

Mr. REILLEY: I have my doubts about it myself.

Hon. Mr. HAYDEN: To me, it is inherently wrong.

Mr. CRYSLER: Whatever my personal feeling about it may be, I am in the position of having a written instruction and perhaps I had better not say more than I have said.

The sections dealing with the discharge of the bankrupt were discussed at some length this morning. I think perhaps I need not go over a great deal of detail in connection with these. We are aware of certain reasons why it would be desirable to have what might be termed an automatic discharge principle in operation, but on the whole we think the present system should be retained. Generally speaking, I would suggest that the state should not be called upon to look after, shall we say, the foolishness of human beings who by doing certain simple things, could protect their own interests. I believe that the expense of applying for discharge should be left to the bankrupt. Even though the cost of obtaining the discharge is small, it is questionable whether that is an appropriate item to include in the expenses of the estate.

Section 146 (4) requires the trustee to give notice of the application for discharge to every creditor of whom he has knowledge, whether or not his debt has been proven. We cannot see why notices should be sent to people who have not proven their debts. Surely until they prove their debts they have no interest.

Section 146 (5)—Procedure when trustee not available. The proposal is good enough, but we wonder just how the necessary records and information will be available in most cases if the trustee is not available.

The CHAIRMAN: If the records were filed with the Superintendent they would be available. A previous section provided for filing of the records with the Superintendent.

Mr. CRYSLER: Yes, sir, but you will perhaps recall that my principals did not like that section. If our view were to prevail, the two amendments would be dropped.

Section 147 (9)—Evidence at a hearing. Section 147 (11)—Right of bankrupt to oppose statements in report. We think that these subsections are impractical. The bankrupt is not given any right to dispute the Superintendent's report, and even if he were it would not be feasible for the Superintendent to appear for evidence and examination whenever there was a dispute.

Section 159 (1) (a)—Courts vested with jurisdiction. This states that the jurisdiction of the bankruptcy court is "to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person."

Hon. Mr. HAYDEN: When Mr. Justice Urquhart was here he criticized this extension of the jurisdiction of the Bankruptcy Court, and suggested that matters which were not bankruptcy matters should be determined in other courts.

Mr. CRYSLER: That is our point. We suggest a revision of this subsection so as to limit the Bankruptcy Court to what are properly bankruptcy matters. Other matters should go to other courts where they are handled now.

There was some discussion this morning on the question of judicial districts. I have not much that is new to say, but I should like your permission to read this paragraph near the bottom of page 11 of the brief:—

So far as Ontario is concerned, section 160 would split up the Bankruptcy Court, now centralized at Toronto into 47 Bankruptcy Courts in the Registry Offices of the Supreme Court of Ontario. This is most undesirable as it would result in dispersion of bankruptcy records and lack of uniformity of practice. It is also undesirable that the local Registrars of the Supreme Court, all of whom are inexperienced in

bankruptcy matters, should be vested with the Registrar's judicial power as local Registrars. Further, action on petitions in outside districts would be delayed until the arrival of Judges on circuits.

I would ask you to bear in mind the importance of that consideration and just what would happen in the case of an estate where there was that delay. The creditors could not do anything until they reached Toronto or until the Circuit Court judge arrived. Where a petition was pending there might be rare doings in a considerable number of estates before the judge arrived on circuit or arrangements were made for an application in the Supreme Court at Toronto.

Hon. Mr. CAMPBELL: That would not necessarily be the case. A petition could be filed in a town like Chatham and the hearing could take place in London or wherever there happened to be a weekly court, or in Toronto.

Mr. CRYSLER: That is right, but remember this much, especially in the worst type of bankruptcy—shall we say where the debtors are real swindlers upon their very face, if you file your petition in Chatham one day and the bankrupt gets knowledge of that, and you have to wait until only next day to act in Toronto, much may happen over night.

Hon. Mr. CAMPBELL: It would not be compulsory for the petitioner to file his petition in the county town. He could use the same practice that prevails now and file in Toronto, and so get over that.

Mr. CRYSLER: I am not familiar enough with court practice to be sure at that point. Could anybody here help us? I am just doubtful.

Hon. Mr. CAMPBELL: Here concurrent jurisdiction is intended, and the lodging of the petition could take place anywhere.

Mr. CRYSLER: Then what is wrong with the present situation where, along with the advantages we have in centralization, while the bankruptcy court is located in Toronto, by leave the parties can try the issues elsewhere; and they do where it is more convenient. The mere fact of the centralization of the Bankruptcy Court in Toronto does not by any means result in all legal proceedings being taken in Toronto; they are regularly taken elsewhere when it is more convenient to the parties.

Hon. Mr. CAMPBELL: I wonder where the real objection lies. The practice works very well in Quebec, I understand, where they have decentralization.

Mr. CRYSLER: I do not know, sir. I have heard, in an unorganized way, of complaints in British Columbia, where apparently some persons want centralization. My knowledge there is very very sketchy, but I do know there are at least some individuals who would like to see a Judge in Bankruptcy designated. Against that, from what the Superintendent in Bankruptcy said this morning, there does not seem to us to be any general objection in those provinces.

Hon. Mr. CAMPBELL: The specific point made is that you feel decentralization would bring about a conflict of decisions or some variation in practice?

Mr. CRYSLER: In the immediate future there would be a certain lack of uniformity of practice and probably you would never get quite such efficient practice as at the present time in the Bankruptcy Court in Toronto, where the officials, not necessarily because they are more competent than in outside points, but because they spend their whole time on the subject and specialize in bankruptcy work, become something of experts. We do not see that material advantages would be gained from decentralization, because, as I mentioned a moment ago, by leave issues can be and are tried outside of Toronto. There are seventeen official receivers throughout the province who have broad powers. Trustees operate all over the province, also with considerable powers of administration. To the best of our knowledge it is not very often that the outside points refer

anything to Toronto. They will of course have their own local solicitors present, but short of that I am told the references to Toronto courts are not at all numerous.

Mr. REILLEY: Nothing can be done outside of Toronto because the officials simply call the first meeting of creditors and report to the court elsewhere. There is no local authority. Everything goes to Toronto. Even if you want to make the simplest application it has to be made in Toronto.

Mr. CRYSLER: Well, it certainly takes courage on my part to contradict the superintendent, and I have no intention of doing so, because I realize he has much more knowledge of this than I have. Nevertheless, our trustees who have participated in this study, and they are very reputable men, have taken the position as stated in the brief. I suppose I am bound by that instruction and must just leave it rest there.

Section 189 (2). This refers to the evidential value of certain original documents in bankruptcy. It reads:

The production of an original document relating to any bankruptcy proceeding, or a copy certified by the person making it as a true copy thereof, or by a successor in office of such person as a true copy of a document found among the records in his control or possession, shall be conclusive evidence for any purpose whatever of the contents of such documents, unless the contrary is proven.

Usually the evidential value given to documents under such circumstances is that those documents shall be prima facie evidence. We suggest that is probably as far as this subsection should go. If the document is conclusive evidence, no matter how wrong it may be, it seems to preclude showing it.

Summary administration is covered by sections 196 to 199. We think they are a very good addition to the act. However, there is one point on which we are wondering. I refer to estates with no assets. These estates are sometimes numerous, especially in large centres. We do not see any provision for doing the work of winding them up, brief as the work may be. Our suggestion, as you will see from my brief, is this: As official receivers have not a staff to administer these estates, it is recommended that they be authorized to appoint trustees to administer them, and that trustees be paid at the public expense.

There may be some other way of meeting the financial cost of complying with this summary administration. That is merely our suggestion.

Fraudulent bankruptcy offences—section 200 (1) (s). It is true that this section is kept under the control of the court before charges can be laid, but there is a feature of it which we think should be adjusted. It says:—

If he has within two years prior to his bankruptcy materially contributed to or increased the extent of his insolvency by improvident and riotous living, by gambling or by rash or hazardous speculation not connected with his trade or business—

You will notice the wording there, "materially contributed to or increased." This is not based on the riotous living and so on being the cause of the bankruptcy. There has been some talk of this situation. A man goes to the horse races or he buys stocks—something which many men do. Some time thereafter he becomes insolvent for other reasons. Then, strictly applying this subsection, the fact that his losses at the races or on the stock market aggravated the situation, there is the possibility that some court might allow him to be prosecuted. We think we know what is in the mind of the draftsman there, and we suggest that the subsection should be revised accordingly.

The CHAIRMAN: They are permitted to play, but they are not permitted to lose.

Mr. CRYSLER: Of course, obviously the draftsman of the subsection had in mind the man who runs completely amuck, as the result of which he goes bankrupt. Let us say it more directly that way.

Hon. Mr. CAMPBELL: It is copied from the former section.

Mr. CRYSLER: Criminal Proceedings—section 206 (4). We think it is a good thing to bring the Crown Attorney into the picture. Usually a bankruptcy offence is within the Criminal Code, and, as I have said, we think it is a good move to bring the Crown Attorney more into the picture.

Now, gentlemen, I will read to you two short paragraphs from the brief and then I shall be through.

CONCLUSION

The present act has been found satisfactory in most respects but some amendments are necessary as suggested in this memorandum.

I should like to emphasize that we have not come down here to find fault with the present act or its administration. We are very well satisfied with that.

The sections of the present act have been construed by the courts over a long period of years, and the law and the practice have become fairly well settled. If the wording of the sections of the act is changed unnecessarily, it would mean the discarding of all the established jurisprudence and case law, and would open the door to fresh litigation.

Many of the sections of Bill A-5 envisage increases in the powers of the Superintendent and greater centralization in the Superintendent's department. If these sections are enacted the department will become larger and more costly. This will be reflected in levies on estates. The debtor and ordinary creditor classes are the groups principally interested in bankruptcy and so far as is known no organizations of these have asked for any such development. Until conditions are in existence leading them to do so, it is submitted there should not be any broad movement toward increasing the Superintendent's powers and centralization of bankruptcy work in his department.

Mr. CHAIRMAN: I wish to thank you very much for the opportunity of appearing before you and presenting our brief.

The CHAIRMAN: We must thank you ourselves. We have undertaken rather a big job and are glad to have your assistance.

The committee adjourned until to-morrow morning at 11 o'clock.

APPENDIX

BRIEF FILED BY THE BOARD OF TRADE OF THE CITY OF TORONTO

The Honourable ELIE BEAUREGARD, K.C., Chairman,
and Members of the Senate Standing Committee
on Banking and Commerce,
Ottawa, Canada.

Honourable Sirs:—

SENATE BILL A-5

AN ACT RESPECTING BANKRUPTCY

The Board of Trade of the City of Toronto is primarily a trade association incorporated by Special Act of the Parliament of Canada originally dated February 10, 1845. Its present membership comprises over four thousand business and professional men engaged in all branches of commerce, industry and finance, and in various professions, many of whom operate nationally and internationally. A substantial number of these members are accordingly interested in legislation respecting Bankruptcy. The Board, therefore, appreciates the opportunity afforded by the Senate Standing Committee on Banking and Commerce of placing before the Committee, on behalf of its interested members, its considered views with regard to Senate Bill A-5 respecting Bankruptcy.

Bill A-5 has been studied in detail by a Committee comprised of representatives of both local and national organizations of unsecured creditors and secured creditors and, in addition, well known licensed trustees. The conclusions of this Committee were subsequently approved by the Council which is the governing body of the Board.

While this Board speaks only for itself, it is desired to advise the Senate Committee that its recommendations are the reconciled and considered opinions of responsible members of the three main groups interested in bankruptcy and competent to speak on this subject matter by virtue of their knowledge and experience.

The Board respectfully submits for your consideration the following comments and recommendations respecting the various clauses of Bill A-5, named:—

INTERPRETATION

Special Resolution—Section 2 (gg)

The basis of voting approval on a special resolution in Section 2 (gg) should be as recommended below under Section 15.

Transaction—Section 2 (jj)

A definition of the word "transaction" has been introduced in Section 2 (jj) to eliminate unnecessary verbiage and repetition of words. While it has this advantage, it also has the disadvantage of losing a large body of settled law in the Court's interpretations of the meaning of the words which no longer will be used. It is to be expected that for a period of time there will be uncertainties under the new definition until doubtful points are again settled by the Courts. Accordingly, the wording of the proposed clause should receive the most careful legal scrutiny with a view to reducing possible doubtful points to the minimum.

ACTS OF BANKRUPTCY

Other Conveyance or Transfer—Section 3 (d)

Section 3 (d) is changed and makes the following an act of bankruptcy:—

If in Canada or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would have the effect of defrauding, delaying or defeating his creditors of any of them.

This subsection in its present form seems so broad that it would cast cloud over legitimate transactions. It should receive careful legal scrutiny and not be enacted in a form which would have such effect.

Bulk Sale—Section 3 (i)

Section 3 (i) is new and makes the following an act of bankruptcy:—

If he makes any bulk sale of his goods *under* the provisions of an Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such bulk sale wherein the sale price will not be sufficient to pay his creditors in full.

Sales of departments by solvent firms are not taken into account. Also this subsection would prevent the present frequent practice of creditors effecting quick and inexpensive liquidation through a bulk sale. The Bankruptcy Act should be left as at present wherein bulk sales only become an act of bankruptcy when they are carried out "without complying with" a provincial Bulk Sales Act.

Ceasing to Meet Liabilities—Section 3 (L)

Section 3 (L) is changed and makes the following an act of bankruptcy:—

If he ceases to meet his liabilities generally as they become due *or fails to pay any particular debt or debts after repeated demands for payment.*

The italicized words are new fail to recognize disputed claims or set-offs. Their effect is to found an act of bankruptcy on an unproven claim. They should be deleted. Failure to pay a particular debt should not be made an act of bankruptcy.

PETITION AND RECEIVING ORDER

Petition by Shareholder—Section 4 (3)

Section 4 (3), which enables a shareholder of a corporation to file a petition against the corporation, should be deleted. Sub-paragraphs (b) to (f) refer to grounds other than insolvency, and the constitutional power of the Dominion Parliament to legislate concerning petitions on these grounds is questioned respecting solvent corporations incorporated under provincial laws. While sub-paragraph (a) is based on insolvency or an act of bankruptcy, such a clause would expose corporations to serious embarrassment at the hands of one or more disgruntled shareholders. Whether or not a shareholder succeeded on a petition the mere charge of insolvency and publicity therefrom would gravely impair the credit of a corporation.

Appointment of Trustee—Section 4 (11)

The effect of Section 4 (11) is to eliminate the custodian. This change is approved as it will avoid delay, save expense and encourage the trustee to proceed with administration as soon as possible. Reference to shareholders should be deleted from this subsection and also Section 4 (15).

Administration of Estates of Deceased Persons—Section 5

Section 5 which provides for filing petitions against the estates of deceased persons is approved in principle. Some revision in wording, however, is required to make it clear that the section refers to only estates, having insufficient assets to satisfy creditor claims.

INTERIM RECEIVERS

Powers of Interim Receiver—Section 7 (2)

The clarification of the powers of the Interim Receiver contained in Section 7 (2) is approved.

ASSIGNMENTS

Assignments by Corporations Other than for Debts—Section 9 (2)

Sub-paragraphs (b) to (e) of Section 9 (2) deal with grounds other than insolvency or bankruptcy. The power of the Dominion Parliament to legislate respecting assignments on these grounds is questioned in the case of solvent corporations incorporated under Provincial Laws.

Sworn Statement—Section 9 (3)

Section 9 (3) requires that the assignment shall be accompanied by, among other things, "in the case of a corporation also a list of the shareholders showing the number of shares of stock subscribed for by each shareholder and the amount of capital paid up by each such shareholder". It is impractical to require the information mentioned in the time available at this stage, particularly in the case of large corporations. Often this information is not readily available and/or it is voluminous and requires a considerable time for preparation. Lines 30-33 should be repealed.

Effect Thereof, Appointment of Trustee—Section 9 (5)

In conformity with the recommendation under Section 4 (3) the reference to shareholders should be deleted.

Application of Summary Provisions of Act to Assignments—Section (10)

The application, under Section 10, of the summary provisions of the Act to assignments, when a licensed trustee willing to act cannot be found, was approved.

COMPOSITION, EXTENSION OR SCHEME OF ARRANGEMENT

New Features

Sections 11 to 24 deal with Compositions, Extensions and Schemes of Arrangement. They involve the introduction of two important features. Provision is made for Compositions, etc., without bankruptcy and there appears to be an intention to bring under the Bankruptcy Act all forms of insolvencies, reorganizations, liquidations and winding-up proceedings.

Section 19 (6) makes compositions otherwise than under the Bankruptcy Act voidable. The effect of this subsection would be to create such a doubt concerning sales and informal settlements, under which small trading estates are often settled inexpensively and expeditiously, that they would in all likelihood be prevented. There would be the same effect on proceedings under such legislation as The Companies' Creditors Arrangement Act. The Farmers' Creditors Arrangement Act, the various provincial Bulk Sales Acts and Companies' Acts and the Winding-Up Act.

Omnibus Feature Unworkable

The apparent proposal to bring all insolvencies, reorganizations, liquidations and winding-up proceedings under the Bankruptcy Act does not take account of the fact that each of the Acts mentioned is a highly specialized instrument carefully and specifically devised to serve entirely different purposes. They simply cannot be lumped together in one omnibus scheme and remain effective in accomplishing their objects.

For instance as regards the Companies' Creditors Arrangement Act, Section 23 would enable the Court to impose a composition, etc., on a class of creditors where the proposal would not carry the votes of a majority of the class. If such a provision were enacted, it would have a detrimental effect on the sale of securities and might well raise the question of whether Canadian securities could be marketed in the United States where even majority clauses are not permitted in trustee deeds. Section 23 violates the fundamental principle of the Companies' Creditors Arrangement Act, namely, that holders of securities shall enjoy the protection of normal laws and not be coerced into accepting as a class a settlement to which the majority of the class does not assent.

Again, in connection with the Companies' Creditors Arrangement Act, Section 104 of Bill A-5 would require, for the purpose of voting, secured creditors to surrender and value their securities and be entitled to vote only in respect of the balance (if any) due after deducting the value of the securities. Obviously, this would create an impossible situation from the point of view of a security holder. Reference is also made to Section 98 which separates classes of creditors for voting purposes and provides for intervention by the Court.

So far as winding-up proceedings are concerned, the proposed clauses fail to take into account decisions of the Privy Council to the effect that the Dominion Parliament has not constitutional power to legislate respecting the winding-up of solvent companies incorporated otherwise than under Dominion legislation.

Further examples of the unworkability of the omnibus scheme could be cited but possibly those mentioned above will suffice.

Proper Scope of Bankruptcy Act

Each of the Acts mentioned should be left as a separate instrument to accomplish its particular purpose. The Bankruptcy Act is an efficient instrument for enabling traders to realize claims on trade debtors. It should be left to serve that purpose and no effort be made to include under it other fields.

Compositions, etc., Without Bankruptcy

However, there would be a decided advantage in expanding the present composition sections of the Bankruptcy Act, which only operate after bankruptcy, to enable compositions before bankruptcy within the Act's proper field as indicated. Often trade estates suffer loss in goodwill on becoming bankrupt and lose valuable contracts cancellable on bankruptcy because compositions cannot be carried out without bankruptcy under the Act. Provision for compositions without bankruptcy were formerly in the Act and were repealed because of abuses which grew up. This was before the office of Superintendent of Bankruptcy was established and trustees were licensed. It is considered that the administration of the Superintendent and the control over trustees will prevent a recurrence of the former abuses.

All of sections 11 to 24, not necessary for compositions without bankruptcy within the scope described above, should be eliminated. As to certain sections which may remain, the following observations are submitted:—

Comments on Sections Which May Remain—Proceedings by Debtor, Documents to be Filed—Section 11(2)(d)

Section 11(2)(d) requires at the commencement of proceedings the filing of a verified, correct statement showing the financial position of the debtor at the date of the proposal. Such a requirement is impractical at this stage, especially in the case of large corporations and often time would not be available for compliance. It is proposed that the subsection provide for a "statement showing as closely as is reasonably possible the financial position of the debtor at the date of the proposal".

Proposals Not to be Withdrawn—Section 11 (3)

The subsection provides for only two days' notice of variations in proposals to sureties. This time is inadequate and should be at least seven days.

Documents to be Sent to Shareholders, Bondholders, etc.—Section 12 (2)

Under Section 12 (2) the trustee is required to send, on request, to each shareholder, bondholder and debenture holder a list of share, bond and debenture holders showing in the case of shareholders the number of shares of stock subscribed for by each shareholder with the unpaid balance, if any, due therein, and in the case of bond or debenture holders the serial number of the bonds or debentures held by each of them with the amount of principal and interest to be shown separately due thereon.

This proposal is too drastic. It will involve trustees in much unnecessary work and estates in heavy costs for the preparation and mailing of this material, particularly in the case of large corporations where it would be voluminous. Moreover, it would not be possible to comply effectively in the case of holders of bearer bonds and share warrants. It would be sufficient to publish notice of a time and place where these records can be inspected.

When Proposal Deemed to be Accepted—Section 15

The wording of Section 15 should be clarified to place the basis of acceptance of proposals on a majority in number of all the creditors holding proven claims of \$25.00 and over present in person or by proxy and voting and 75 per cent in amount of those present in person or by proxy and voting.

Creditors May Provide for Supervision of Debtors' Affairs—Section 16

The provision in Section 16 for including in proposals terms respecting supervision of the affairs of the debtor during the composition, extension or scheme is approved.

Companies' Creditors Arrangement Act

The Companies' Creditors Arrangement Act was passed to enable the reorganization of corporations where classes of securities are involved. It has proved a valuable instrument for realization by investors and it is most important that it be retained for that purpose.

However, the provisions of the Companies' Creditors Arrangement Act were wide enough to permit ordinary trading compositions, extensions and schemes of arrangement under it and, in the years before the war, when insolvencies were more numerous than now, certain defects, principally of a procedural character, did become apparent from the point of view of unsecured creditors in proceedings taken by purely trading debtors under that Act.

It is necessary that the Act be amended to guard against a recurrence of these defects and prevent its use for all practical purposes where trade creditors' interests are primarily involved. It is understood secured creditor interests are preparing suggested amendments to accomplish this purpose.

ADMINISTRATIVE OFFICIALS

Duties of Superintendent—Section 39 (4) (g)

The provision in Section 39, (4) (g) for the Superintendent of Bankruptcy auditing and examining trustees' accounts of receipts and disbursements and final statements and granting releases to trustees should be deleted and these functions left with the Court where they now rest. Oral explanation is often necessary in passing accounts, especially in large estates and the Courts are more accessible and provide more facility for oral explanations than the Superintendent in Ottawa acting for the whole of Canada. Moreover, while these proceedings are in the Court, creditors can intervene as the trustee must give them notice. Also, no provision is made for creditors and trustees appealing from the decision of the Superintendent, except in Section 91 (8).

No Trustee Bound to Act—Section 40 (3)

As the trustee is to be appointed in the first instance, he has not sufficient opportunity to investigate before appointment. Under Section 40 (3) he should not be bound to act until following his acceptance he has been confirmed at the first meeting of creditors.

DUTIES AND POWERS OF TRUSTEE

Insurance—Section 44 (1)

The trustee should not be required to take out theft insurance as is required by Section 44 (1). Frequently burglary insurance on the assets of a bankrupt estate cannot be obtained. Also assets are frequently of such nature that burglary insurance is not required and its cost would be an unnecessary burden on the estate.

Moneys to be Deposited in Bank—Section 44 (3)

It is impractical to limit all payments to cheques drawn on the estate account as is provided in Section 44 (3). Moreover, cheques are not legal tender.

Books and Records—Section 44 (5), (6) (7)

With regard to the books to be kept by the Trustee, Section 44 (5) is too detailed. It would require trustees with other good systems to conform to the particular method laid down. Also there is considerable doubt whether certain of the records mentioned should be kept separate for each estate. There are strong arguments in favour of their being kept in a general minute book of the trustee. Section 55 of the present Act is adequate and should be retained as the proposed subsection would be impractical in large and operating estates.

It would not be fair to require a trustee to surrender the records mentioned in ss. (6) and (7) to a new trustee or the Superintendent. Once the records were gone, the original trustee would be without the means of answering enquiries or protecting himself.

Persons Claiming Property in Possession of the Bankrupt—Section 53 (1)

The new provision in Section 53 (1) that the trustee may waive the filing of a proof of claim if satisfied a claimant is legally entitled to property, should be struck out as it is likely to lead to loose practice. A proof of claim should always be required.

How Filed Claim Disposed of—Section 53 (2)

The periods allowed the trustee in Section 53 (2) to admit or dispute claims and allowed the claimant to appeal should each be increased from 15 to 30 days. The trustee should have 30 days normally to complete investigations before being required to admit or dispute claims and, where necessary, a longer time

in the discretion of the Court. The claimant should have the longer period as various conditions such as being away may result in delay in appeal as the Act provides that if an appeal is not lodged within the time set a claimant will be deemed to have abandoned his claim.

Trustee Not Liable for Costs or Damages—Section 53 (5)

The provision in Section 53 (5) relieving the estate of liability for the costs of establishing a claim or of an appeal is too broad. The Court should have discretionary power to award costs to a claimant where it is clear he has been unnecessarily put to the expense of proceedings to establish his claim.

APPEALS FROM DECISION OF TRUSTEE

Proceedings by Creditor When Trustee Refuses to Act—Section 63 (1)

Section 63(1) would enable a creditor to act in his own name in proceedings when the trustee refuses or neglects to act. While this would overcome difficulties which sometimes arise when trustees require indemnity for costs, it is noted that before a creditor could carry on proceedings in his own name, the right of action would have to be transferred from the trustee to the creditor and there is insufficient protection provided other creditors for sharing in any funds recovered. For these reasons the present provisions contained in Section 69 of the Act should be retained.

SETTLEMENTS AND PREFERENCES

Avoidance of Preferences—Section 68

Section 68 is a redraft of the provisions respecting settlements and preferences. There has been much litigation on the section now in the Act and there is a considerable body of settled case law. In order to retain the benefit of this settled law and avoid the contentious feature concerning "concurrent intent", it is suggested that Section 64 of the present Act be retained and a subsection added providing that it is not necessary for the trustee or creditor attacking the alleged preference to show concurrent intent.

Protected Transactions—Section 69(2)

Section 69(2) concerning protected transactions places the onus of proof on the person supporting the validity of the transaction. It seems unfair to so leave the onus of proof on transactions more than three months old as in the course of time records necessary to proof are often mislaid or lost. In the case of the older transactions the onus should lie on the person attacking the validity of a transaction. As the new section gives no advantage and seems to confuse, it is considered the section now in the Act, Section 65, should be retained.

DIVIDENDS

When Complete Realization Delayed—Section 78 (1)

The Superintendent should not, as proposed in Section 78 (3), be given power to direct preparation of an interim statement and to pay an interim dividend. This should be left to the discretion of the inspectors.

No Action for Dividend—Section 78(4)

Following the recommendation in the preceding paragraph, the reference to the Superintendent should be deleted from Section 78(4).

Statements of Receipts and Disbursements—Section 82

The proposal in Section 82 that the trustee's statement of receipts and disbursements should be passed by the Superintendent should be deleted and the

passing of these statements left to the Courts as at present which is the case with accounts of trustees, liquidators, receivers, executors, administrators and Committees of lunacy, etc.

Notice of Final Dividend—Section 83 (1) (c)

The last three lines of Section 83(1) (c) should be deleted respecting the trustee's application to the Superintendent for his release.

Shareholder Deemed to be a Creditor for Distribution—Section 87

Section 87 should be deleted. If assets remain after satisfaction of creditors' claims, such assets should not be distributed to shareholders but returned to the corporation.

Distribution of Surplus Corporation Funds—Section 88 (2)

Once creditors' claims have been met in full, the trustee has no further interest in any assets remaining and should return such assets to the corporation. Subsection 88(2) should be deleted.

REMUNERATION OF TRUSTEE

Fixed by Superintendent—Section 90(6)

Section 90(6), which provides that in certain circumstances the Superintendent should fix the remuneration of the trustee without right of appeal, should be deleted and this function be left to the Court as at present.

RELEASE OF TRUSTEES

Release of Trustee—Section 91

Section 91 provides for trustees applying to the Superintendent for discharge, there being no right of appeal except in Section 91(8). This matter should be left to the Court as at present where all interested parties may appear, where argument may be heard and there are the usual rights to appeal.

Vesting of Undisposed Property—Section 92(1)

Section 92(1) would result in undisposed of equities in real property automatically vesting in mortgagees. This should not be the case as often real estate which cannot be sold at the time of the bankruptcy later increases in value. This subsection should be struck out.

Disposal of Unrealizable Assets—Section 92(2)

Section 92(2) automatically vests in the bankrupt property unrealized at the time of the trustee's release. There should be no property revested in the bankrupt except under compositions with the approval of the Court.

Disposal of Documents of Title and Records—Section 92(3)

Documents of title should not be returned to those entitled by the trustee as provided in Section 92(3), but should be held by him subject to the Rules and direction of the Court.

Final Disposition of Property or Documents—Section 92(5)

When the trustee is unable to dispose of property or documents their disposition should not be under the direction of the Superintendent as proposed in Section 92(5) but as directed by the Court.

CREDITORS

First Meetings of Creditors—Section 93(1)

The provision added at the end of Section 93(1) authorizing the Official Receiver to authorize meetings at the office of another Official Receiver seems

by implication to prevent an Official Receiver from designating a room other than his own office as the place of meeting in his own locality. As often the Official Receiver's Office is not a suitable place for the meeting, it should be made clear he can designate another place.

PROCEDURE AT MEETINGS

Chairman Shall Have Casting Vote—Section 96 (3)

Section 96(3) gives Chairman of meetings a casting vote. This could prove very embarrassing to a Chairman of a meeting, who sometimes is the Official Receiver, in the appointment or removal of trustees. To avoid this, it is suggested the following words be added to the subsection:— "In the case of a tie vote on the appointment or removal of a trustee, the Chairman shall not have a casting vote and the trustee presently appointed shall continue in office".

Right of Creditors to Vote—Section 100(1)

Section 100(1) gives a creditor the right to vote if he has lodged his proof with the trustee before or at the meeting before voting. This does not give the trustee a reasonable opportunity to check claims. Proofs should be filed before the meeting.

Persons Not Entitled to Vote—Section 105 (3) (1)

Section 105(3) (1) states that among others "any person associated with the Bankrupt 'may not vote'." The term "associated" is too loose and the intention behind it should be stated in more specific terms.

Who May be Inspectors—Section 108 (2)

Shareholders should not have the right to vote for inspectors as is provided in section 108(2). The body of shareholders constitutes the debtor and it is the settled principle of the Bankruptcy Act that control should be by the creditors.

Trustee or Inspector May Call Meetings—Section 108(7)

An inspector should not be able to block the calling of a meeting with less than three days' notice as is provided for in Section (108)7. Nor should an inspector be permitted to call a meeting which is provided for in the same subsection.

Inspectors' Fees—Section 108(14)

The scale of inspectors' fees in Section 108(14) is inadequate and should be doubled. Also fees for special services should be approved by the Court and not by the Superintendent as is proposed.

PROOF OF CLAIMS

Proof by Post or Delivery—Section 110(2)

Sanction of Proven Claims—Section 110(7)

Section 110(2) (7) does not require proof of claims to be sworn to. The present requirement that proof of claim be sworn should not be dropped.

Shall State Whether Secured—Section 110(5)

Section 110 (5) requiring the proof of claim to state whether or not the claim is secured or preferred should not make the claim unsecured in the absence of such a statement. The words "otherwise, etc." to the end of the subsection should be deleted, and the words "and, if so, to what extent" be substituted therefor.

PROOF BY SECURED CREDITORS

No Creditor to Receive More than 100 Cents on the Dollar—Section 118

It should be made clear under Section 118 that as well as receiving 100 cents on the dollar secured creditors may recover the costs of realizing their security.

RESTRICTED CREDITORS

Postponement of Wage Claims of Relatives—Section 121

Section 121 concerning postponement of the wage claims of relatives refers to relatives to the third degree. In many cases this will not be understood. The provisions now in Section 117 of the Act detail the relatives affected. They are much more easily understood and the section now in the Act should be retained.

ADMISSION AND DISALLOWANCE

PROOFS OF CLAIM BEFORE COURTS

Trustee Shall Examine Proofs—Section 125(1)

The provision in Section 125(1) requiring a trustee to notify all creditors whose claims have been admitted should be deleted. Notification of admission of claims in all cases is unnecessary and would involve a great deal of trouble and postage and other expense. Also the trustee should not be put in the position in the early stage of a bankruptcy before he has had adequate opportunity to investigate, of having to generally admit claims or dispute them and force issues.

*Trustee May Require Creditor to Prove Claim Before the Court—Section 125 (2)**Creditor May Require Trustee to Admit Claim—Section 125 (3)*

Section 125 (2) and (3) and following subsections enabling the trustee, without taking a position, to call on claimants to prove their claims, is approved.

SCHEME OF DISTRIBUTION

Priority of Claims—Section 126

Section 126 clarifying and revising priority of claims is approved.

BANKRUPTS

Duties of Bankrupts—Section 133

The statement of the bankrupt's duties in Section 133 is approved with the exception of the provision for the Official Receiver authorizing assistance to the bankrupt in preparing statements of affairs, when the affairs of the bankrupt are complicated or involved. In practice the trustees regularly perform this work.

EXAMINATION OF BANKRUPTS AND OTHERS

Examination of Bankrupts at Meetings—Section 137 (4)

The provision in Section 137 (4) for the evidence of the bankrupt being taken down in shorthand is impractical. A competent stenographer is by no means always available.

Questions Must Be Answered—Section 143

The provision in Section 143 that evidence taken on examinations may be given in evidence in subsequent proceedings should be limited to evidence given at the formal examination mentioned in Sections 138, 139 and 142 (but not including examinations before the Official Receiver), of the Bill. It would be unfair to give in evidence, evidence taken at an informal examination.

DISCHARGE OF BANKRUPT

Bankruptcy to Operate as Application for Discharge—Section 146 (1)
Appointment to be Obtained by Trustees—Section 146 (2)

Section 146 (1) and (2) introduces what might be termed an automatic discharge principle and places on the trustee the onus of obtaining an appointment for hearing the application for discharge within six months of the bankruptcy. It is understood that a similar provision is in United States bankruptcy legislation and that there is dissatisfaction with its operation. In any event, the six months' time limit is impractical as so often the trustee will be unable to complete and submit the required report by that time. Also the estate should not bear the cost of the application. Section 146 should be eliminated and the Act left in its present state wherein the bankrupt is responsible for applying for his discharge.

Notice to Creditors—Section 146 (4)

Section 146 (4) requires the trustee to give notice of the application for discharge to every creditor of whom he has knowledge, whether or not his debt has been proven. The notice should only be required to be given creditors who have proven as it is a deep-seated principle of bankruptcy that creditors who have not proven have no status.

Procedure When Trustee Not Available—Section 146 (5)

Section 146 (5) empowers the Court to authorize some other person to act in applying for the bankrupt's discharge when the trustee is not available. It is difficult to understand how this proposal can operate satisfactorily as if the trustee is not available necessary records will not be either. Also, the clause regarding creditors reporting adverse facts would result in an accumulation of unreliable statements which would require too much work to check.

Evidence at Hearing—Section 147 (9)

Rights of Bankrupt to Oppose Statements in Report—Section 147 (11)

Section 147 (9) and (11) are impractical. The bankrupt is not given any right to dispute the Superintendent's report, and if he were it would not be feasible for the Superintendent to appear for evidence and examination whenever a bankrupt opposed his report.

COURTS AND PROCEDURE

Courts Vested with Jurisdiction—Section 159 (1) (a)

Section 159 (1) (a) states that the jurisdiction of the Bankruptcy Court is "to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person."

The wording is so wide that it would bring into the Bankruptcy Court matters other than those purely bankruptcy matters which the Bankruptcy Court was set up to handle. The subsection should be revised to limit the Bankruptcy Court to proper bankruptcy matters.

Establishment of Judicial Districts of Courts for Bankruptcy Purposes—

Section 160

So far as Ontario is concerned, Section 160 would split up the Bankruptcy Court, now centralized at Toronto, into 47 Bankruptcy Courts in the Registry Offices of the Supreme Court of Ontario. This is most undesirable as it would result in dispersion of bankruptcy records and lack of uniformity of practice.

It is also undesirable that the local Registrars of the Supreme Court, all of whom are inexperienced in bankruptcy matters, should be vested with the Registrar's judicial power as local Registrars. Further, action on petitions in outside Districts would be delayed until the arrival of Judges on circuits.

The present system has important advantages which should be retained. One Judge hearing all bankruptcy matters promotes uniformity in decisions. One office of record enables a complete search to be made in one place where all records are concentrated. Where there is only one Bankruptcy Court sitting, the confusion of simultaneous petitions at different points is avoided.

It may also be observed that centralization of the Bankruptcy Court in Toronto does not prevent much bankruptcy work being done outside the City where that is more convenient for the parties. Voluntary assignments can be made to 16 Official Receivers throughout the Province and leave may be given to try issues outside of the city. Also the local Official Receivers and Trustees have sufficiently wide powers to carry on administration that frequent reference to the Bankruptcy Court in Toronto is not necessary.

SUPPLEMENTAL PROVISIONS

Documentary Evidence as Proof—Section 189 (2)

Section 189 (2) states that original or certified true copies of documents relating to bankruptcy proceedings shall be conclusive evidence of their contents. It is questioned whether they should be more than prima facie evidence of their contents.

Summary Administration

Section 196 which sets up a procedure for summary administration of bankrupt states without assets is approved generally. However, no provision is made for the cost of such administration. As official receivers have not a staff to administer these estates, it is recommended that they be authorized to appoint trustees to administer them, and that trustees be paid at the public expense.

In conformity with earlier recommendations, references to obtaining approval or permission from the Superintendent should be deleted and these matters left to the Court.

BANKRUPTCY OFFENCES

Fraudulent Bankrupts—Section 200 (1) (s)

Section 200 (1) (s) makes riotous living, gambling and cash speculation and offence if it materially contributed to or increased the extent of the insolvency. It is noted that the section is not based on them being the cause of the bankruptcy. Hence in the case of bankruptcies caused otherwise and later a person might be guilty of a bankruptcy offence because he had speculated on the stock exchange or gone to the horse races or done some other possibly foolish but all too human thing. The subsection should be revised accordingly.

Criminal Proceedings—Sections 206 (4) and following

Sections 206 (4) and following which place certain responsibilities on the Crown Attorney in initiating criminal proceedings respecting bankruptcy proceedings is approved.

Failure to Observe Provisions of the Act—Section 208 (d)

The reference to the Superintendent should be deleted from Section 208 (d). While a trustee may properly be considered guilty of an indictable offence if he fails to carry out a Court Order he should not be so guilty on failure to carry out an order of the Superintendent.

CONCLUSION

The present Act has been found satisfactory in most respects but some amendments are necessary as suggested in this memorandum.

The sections of the present Act have been construed by the Courts over a long period of years, and the law and practice have become fairly well settled. If the wording of the sections of the Act is changed unnecessarily, it would mean the discarding of all the established jurisprudence and case law, and would open the door to fresh litigation.

Many of the Sections of Bill A-5 envisage increases in the powers of the Superintendent and greater centralization in the Superintendent's department. If these sections are enacted the department will become larger and more costly. This will be reflected in levies on estates. The debtor and ordinary creditor classes are the groups principally interested in bankruptcy and so far as is known no organizations of them have asked for any such development. Until conditions are in existence leading them to do so, it is submitted there should not be any broad movement toward increasing the Superintendent's powers and centralization of bankruptcy work in his department.

Respectfully submitted,

(Sgd.) H. M. TURNER,

President.

(Sgd. F. D. TOLCHARD,

General Manager.



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THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intitled:
"An Act respecting Bankruptcy."

No. 5

WEDNESDAY, JULY 24, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

Mr. J. G. McEntyre, Legal Assistant, Department of National Revenue
(Taxation.)

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy.

OTTAWA
EDMOND CLOUTIER, B.A., L.Ph., C.M.G.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	Michener
Beaubien (<i>Montarville</i>)	Foster	Molloy
Beauregard	Gershaw	Moraud
Buchanan	Gouin	Murdock
Burchill	Haig	Nicol
Campbell	Hardy	Paterson
Copp	Hayden	Quinn
Crerar	Howard	Raymond
Daigle	Hugessen	Riley
David	Jones	Robertson
Dessureault	Kinley	Sinclair
Donnelly	Lambert	White
Duff	Leger	Wilson—(47).
DuTremblay	Macdonald (<i>Cardigan</i>)	

MINUTES OF PROCEEDINGS

WEDNESDAY, July 24, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators Campbell, Acting Chairman; Aseltine, Copp, Dessureault, Donnelly, Euler, Gershaw, Gouin, Howard, Hugessen, Jones, Leger, Macdonald (*Cardigan*), McGuire, Quinn, Robertson, Sinclair, White.—13.

In the absence of the Chairman, the Hon. Senator Campbell was appointed Acting Chairman.

Bill A-5, an Act respecting Bankruptcy, was again considered.

The official reporters of the Senate were in attendance.

Mr. J. G. McEntyre, Legal Assistant, Department of National Revenue (Taxation), submitted a brief on behalf of the Department, and was heard by the Committee.

Mr. W. J. Reilley, K.C. Superintendent of Bankruptcy, was heard in explanation of certain clauses of the Bill.

Further consideration of the Bill was postponed.

Attest:

R. LAROSE,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Wednesday, July 24, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A-5, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. CAMPBELL (Acting Chairman) in the Chair.

The ACTING CHAIRMAN: Gentlemen, Mr. McEntyre of the Department of National Revenue is here to make some representations with respect to the Bankruptcy Bill, and I will call upon him now.

Mr. J. G. McEntyre, Legal Assistant, Department of National Revenue (Taxation): Mr. Chairman, Honourable Senators, in the administration of the income tax we have occasion to study the Bankruptcy Act and procedure. And when this bill was introduced in the Senate we considered it and found in it two provisions which we think conflict with provisions in the Income War Tax Act. I prepared one memorandum dealing with each of the provisions which we think conflict. Copies of these memoranda were sent to the Minister of Justice, the Minister of Finance, the Secretary of the Committee and Mr. Reilly, the Superintendent of Bankruptcy. I think perhaps the simplest procedure would be for me to read the memoranda. The first one deals with section 126 of the bill, with respect to priority of claims. Our particular interest in that is the claim for tax deductions made at the source by an employer from the salaries and wages paid to his employees.

Under section 126 of the bill the claim for income taxes deducted at source would appear to rank with the last of the prior claims at paragraph (j) of subsection (1).

Section 92, subsection (2) of the Income War Tax Act requires employers to make deductions from the salaries and wages paid to their employees and remit these moneys to the Receiver General of Canada. In the determination of the employees' income tax liability at the end of the year, credit is given for the amounts so deducted. In this way the employer becomes the fiduciary agent of the Crown in the collection of income tax on a "pay as you earn" basis.

In order to protect the Crown against the event that the employer should fail to remit the amount of taxes deducted at source, it is provided at section 92, subsection (7A):

Every person who deducts or withholds an amount under this section is liable to pay to His Majesty on the day fixed by or pursuant to subsection two of this section an amount equal to the amount so deducted or withheld and such liability shall constitute a first charge on the assets of such person and shall, notwithstanding the Bank Act, the Bankruptcy Act or any other statute or law, rank for payment in priority to all other claims, either of His Majesty in right of a province of Canada or any other person, of whatsoever kind heretofore or hereafter arising, save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.

Hon. Mr. LEGER: I do not think the draftsman meant that those taxes would be a claim of the Crown. They are property of the Crown.

Mr. McENTYRE: Perhaps I should clarify that a little bit. Under ordinary circumstances where the tax is deducted at the source, if the employee's pay is, say, \$20, the employer simply holds back \$2, which he sends to the Department.

Hon. Mr. LEGER: That is property of the Crown.

Mr. McENTYRE: Yes. But what happens if the employer gets into financial difficulties? He figures that at the end of the week he will owe that employee \$20, but that \$2 of it belongs to the Crown; so he borrows from the bank or collects from his creditors and provides only the \$18, which he gives to the employee, and he says to the employee, "Two dollars of that belongs to the income tax." If the employer goes into bankruptcy soon after that, the amount that belongs to the Crown, the \$2, never existed.

Hon. Mr. LEGER: In other words, you mean that money was found among his assets. That is the only place you could find it.

Mr. McENTYRE: The two dollars as a sum of money or as a trust fund is never there.

Hon. Mr. LEGER: I do not know whether a "claim" is defined, but surely that two dollars you speak of would not be a claim of the Crown; it would be its property.

Mr. McENTYRE: Yes, sir; provided we could find it.

Hon. Mr. EULER: Could you not recover that from the employee?

Mr. McENTYRE: The position is, we have obliged the employee to take a reduced amount of his salary in full payment.

Hon. Mr. EULER: You are really the debtor, instead of the employee being the debtor.

Mr. McENTYRE: We have appointed the employer as our agent to collect this money.

Hon. Mr. EULER: If he fails to discharge his duty as agent, have you any claim left against the employee?

Mr. McENTYRE: We have submitted that to the Department of Justice. They say our Act is not clear on that point, and they suggest we should hesitate to pursue the employee for the recovery of that amount.

Hon. Mr. EULER: You have never done that?

Mr. McENTYRE: No sir, we have never done that.

Hon. Mr. LEGER: If you think that should be classified as a claim of the Crown, surely that subsection should be amended.

Hon. Mr. COPP: Does the employer report every week?

Mr. McENTYRE: Yes, sir.

Hon. Mr. COPP: And remit anything held back?

Mr. McENTYRE: Yes, sir.

Hon. Mr. COPP: So you would have only one week held back at any time.

Mr. McENTYRE: In the administration of the Income War Tax Act we find it impossible to keep tab on every employer every week. Occasionally when bankruptcy occurs we find there may be three or four weeks of arrears of tax deduction at source that have not been remitted.

THE ACTING CHAIRMAN: You are speaking of tax deduction at source only.

Mr. McENTYRE: Yes.

THE ACTING CHAIRMAN: Your submission is that the employer is the agent of the Crown, and therefore those funds are in the nature of trust funds in his hands; or, as Senator Leger comments, they are really the property of the Crown in the hands of your agent.

Mr. McENTYRE: That is correct.

The ACTING CHAIRMAN: You feel you may have a claim against them for those funds, and under this section of the Act you would specifically rank *pari passu* with other Crown claims.

Mr. McENTYRE: Yes.

Hon. Mr. LEGER: My point was, whether it would be a claim or whether the Crown would simply walk in and take its property.

The ACTING CHAIRMAN: I think very likely it could if the employer is the agent of the Crown. It might be made clear if you have a suggested amendment.

Mr. McENTYRE: The rest of my memorandum is rather short.

Hon. Mr. LEGER: I am sorry I interrupted, but I just wanted an explanation.

Mr. McENTYRE: The priority for payment quoted therefore gives the Crown a right of preference greater than that contemplated in section 126 of the bill. It is recommended that the bill should provide for the payment of taxes deducted at source in a manner consistent with the Income War Tax Act.

Under section 121 of the present Bankruptcy Act the claim for taxes deducted at source would rank second after the costs and expenses of the custodian and the fees and expenses of the trustee. To be consistent with the provisions of the section of the Income War Tax Act quoted above, it is submitted that the bill should provide for the payment of this claim immediately after item (d) in section 125, subsection (1).

Paragraph (c) is the levy payable under section 132. I understand that is one-half of one per cent which the Superintendent in Bankruptcy receives.

Hon. Mr. LEGER: You just want to advance the priority, that is all?

Mr. McENTYRE: Yes, sir.

In this way it would rank ahead of claims for arrears of wages. This is reasonable because employees are in a favourable position to insist on the payment of their salaries and wages as they become due, and, in the case of a corporation, they can assert their claim against the directors personally according to the various provisions in the different Companies' Acts. Furthermore, the tax deduction claim is in effect a claim for arrears of wages because it is a claim for that part of the employee's wage which is to be placed to his credit against his eventual liability for Income Tax. Ranking the tax deduction claim ahead of the employee's claim would be in accord with the common-law principle that the Crown is to be preferred to other claimants of equal rank.

It is therefore recommended that the following item (d) be inserted after item (c) of section 126, subsection (1) of the bill and that the subsequent items (d), (e), (f), (g), (h), (i) and (j) become items (e), (f), (g), (h), (i), (j) and (k) respectively:—

(d) The claim of the Crown in the right of the Dominion of Canada for the amount of the deductions made from salaries and wages pursuant to the Income War Tax Act.

This is an incomplete memorandum prepared to introduce the subject and here are other important reasons which can be given in support of the submission made.

The ACTING CHAIRMAN: Do you not think (j) should be amended also? All claims of the Crown in the right of Canada or of any province thereof *pari passu* notwithstanding any statutory preference to the contrary . . . " other than claims provided for under subsection (d).

Mr. McENTYRE: Perhaps that is so, but I wonder whether it is necessary. The draftsman does not seem to have thought so, because under (h) there would be claims of the Crown.

The ACTING CHAIRMAN: That will be considered, anyway.

Mr. McENTYRE: I may just add that Section 92, subsection 7 (A) of the Income War Tax Act was only enacted at the last session of parliament, and came into force in December, 1945.

The other point which I have to make relates to the Bill at Section 43, subsection 13.

Mr. REILLEY: Mr. Chairman, as Mr. McEntyre is dealing with his representation in two memoranda, one relating to income tax and the other to other features of the bill, may I be permitted to make my reply to his representations on this point, at this time?

The ACTING CHAIRMAN: Yes.

Mr. REILLEY: I hesitate to interrupt the witness in this way, but for the benefit of the Committee I think it better that all should be heard on this point when it is right before you.

In the first place, this question of priorities is one of the thorniest that a trustee in bankruptcy has to deal with. I would refer you to page 84 of the bill where you will see listed the various priorities that have been established by the Crown. It has reached such a stage that it is absolutely impossible for any trustee to draft a dividend sheet and say what are the priorities of the Crown. In this memorandum you will see there are some twenty-one priorities established by the Crown in the right of the provinces and of the Dominion. The object of section 126 is to provide a scheme of distribution that a trustee can follow without having to go to twenty-five other Acts scattered all through the statutes of the dominion and the provinces.

Hon. Mr. McGUIRE: Are all these claims prior to those of the trustee?

Mr. REILLEY: Some are. It is hard to say where a great many do belong. After the Bankruptcy Act was passed the Crown in the right of the provinces and of the dominion found its claims were not being paid with the priority that it thought they should get, and in the past twenty-odd years it has become the ordinary practise of the Crown in the right of the dominion and of the provinces every time it might have a debt owing to pass legislation that the claim of the Crown shall have priority over everything else. As a result you see these twenty-odd types of claims, some of one class, some of another, and it has become impossible for any trustee to set up a dividend sheet on a proper basis.

Hon. Mr. LEGER: Are you sure you have them all there in the twenty-one priorities?

Mr. REILLEY: I will take my chance on that.

You spoke, Senator, of the deduction at source payments. The statute says that every person who deducts tax at source is liable to pay it to His Majesty. So immediately that deduction is made it sets up a debt, it is not a trust fund at all. It is merely a debt that is owed to His Majesty.

Hon. Mr. McGUIRE: The employer owes a debt.

Hon. Mr. COPP: It is not a trust fund.

Mr. REILLEY: It is not a trust fund at all. As a matter of fact, the year before last the income tax department had inserted a clause which set it up as a trust fund, and said that it must be paid into the bank and kept separate, it would then belong to the Crown. But they found out that when bankruptcy occurred there was no trust fund in the bank, and consequently there were no funds belonging to it. In an attempt to get a priority that section setting up a trust fund was deleted, and it was made a debt due by the employer to the Crown.

Hon. Mr. LEGER: If the word "pay" was changed to "remit", would that not make it a trust fund?

Mr. REILLEY: I do not know whether it would or not.

Hon. Mr. LEGER: I am just asking the question. I am not sure myself.

Mr. REILLEY: The point is, Senator, if there is a trust fund and there is no money in that fund then it is only a debt.

Hon. Mr. LEGER: It would be a trust fund which has been mingled with the assets.

Mr. REILLEY: Unless it can be traced in its identical fund it becomes only an ordinary debt. The principle is that it must be traceable.

Hon. Mr. LEGER: If it has been deducted it would be traceable.

Mr. REILLEY: Not necessarily. The basis of all trust funds in a situation of this kind is that it must be traceable. Under the other legislation there was no trust fund they could find or trace, and consequently they deleted it and put in this section making it a debt to the Crown.

Mr. McENTYRE: Will you excuse me Mr. Reilley? I think you will find the tax provisions are still there. The part that was deleted was simply a priority division which was previously there and found not to hold in the courts. We put in a stronger provision, which is subsection (7A). Subsection 6 reads:—

Any person who, pursuant to subsections one or two of this section, deducts or withholds any amount from any payment which he is liable to make to any person shall be deemed to hold the amount so deducted or withheld in trust for His Majesty.

Subsection (7) reads:—

All amounts deducted or withheld by any person under subsections one and two of this section shall be kept separate and apart from the moneys of the person so deducting and in the event of any liquidation, assignment or bankruptcy of the person who made such deductions the said amounts so deducted shall remain apart and form no part of the estate of such person in liquidation, assignment or bankruptcy.

Then subsection (7A) reads:—

Every person who deducts or withholds an amount under this section is liable to pay to His Majesty on the day fixed by or pursuant to subsection two of this section an amount equal to the amount so deducted or withheld and such liability shall constitute a first charge on the assets of such person and shall, notwithstanding the Bank Act, the Bankruptcy Act or any other statute or law, rank for payment in priority to all other claims, either of His Majesty in right of a province of Canada or any other person, of whatsoever kind heretofore or hereafter arising, save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.

Hon. Mr. LEGER: Would you not be in a stronger position, if that last subsection were not enacted?

Mr. McENTYRE: We found that we met two sets of circumstances. We first said the employer would provide the full amount of his payroll, and he would allocate the part for payment to employees and the part to be sent to the Department of National Revenue; that part for the Department of National Revenue would be segregated into a trust fund. In those circumstances we found that the trust fund does not form part of the bankrupt estate; it belongs to the Crown, and should not come under the control of the trustee but should be paid over directly. That was one step. The other thing that happened was when an employer became in financial difficulties instead of providing his full payroll he would calculate his net payroll after tax deduction, and he would provide only that which he had distributed to his employees, but as for the part that went to the Department of National Revenue, it did not exist.

Hon. Mr. LEGER: He would be financing with money belonging to the Crown, to a certain extent.

Mr. McENTYRE: I would say that would be the result.

Hon. Mr. LEGER: And the money would still belong to the Crown whether he financed with it or not.

Mr. McENTYRE: Very often he would never provide it at all; frequently to get his payroll he would have to go to the bank and borrow. Instead of borrowing the full amount of his payroll he would borrow only the net amount, so that the money due the National Revenue Department would never exist.

Hon. Mr. McGUIRE: In subsection (7A) you accept the costs of the assignee. Why do you not also accept the costs and expenses of the trustee in bankruptcy?

Mr. McENTYRE: I would interpret that section to include the costs of the trustee in bankruptcy. It reads in part:—

—except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.

I think that would be wide enough to include the trustee in bankruptcy.

Hon. Mr. McGUIRE: The trustee in bankruptcy would be a public officer.

Mr. McENTYRE: That is correct, sir. I am sorry to have interrupted you, Mr. Reilley.

Mr. REILLEY: Now is the time to do it.

Hon. Mr. McGUIRE: Mr. Reilley, what happens in a case where the trustee in looking over the assets for priority finds perhaps that there is half enough to pay the priorities and nothing to pay him? What is his attitude then?

Mr. REILLEY: Well, to say the least, it is a very unhappy situation.

Hon. Mr. McGUIRE: Does he proceed to sell what he can under the priorities and get nothing himself?

Mr. REILLEY: He gets nothing himself.

Hon. Mr. McGUIRE: Or does he quit?

Mr. REILLEY: There has been the trouble I have in the bankruptcy administration. When these cases arise the trustee says, "There is nothing in it for me so I am going to resign." What are we going to do then? This is only one; we have twenty-one others. This is only Ontario; I do not know how many others there are in the other provinces.

Hon. Mr. LEGER: That is why I asked the question; I felt that you had not covered them all.

Mr. REILLEY: I listed only those from Ontario. My idea was that there is no large amount involved in the question of deductions from employees when bankruptcy occurs. In any case there is no particular reason why it should be given preference over all these other matters: corporation tax, hydro electric, stock transfers and other income tax. Instead, it is simple to set up a basis on which distribution can be made by a trustee. In my opinion the only way it can be done is to set out the distribution scheme and let all comply with it. If there is some certain reason why the wage deductions should receive a priority over others, I do not know what it should be. There is nothing particularly different from the other income tax which takes its prerogative right. It must be remembered that debts owing to the Crown always have a prerogative right which takes precedence over unsecured creditors. The other claims which are given precedence are: costs of administration, municipal taxes, rents, workmen's compensation—surely workmen's compensation is entitled to an equal priority with deductions for income tax. Then there are claims of the Crown generally. If it is suggested that they should be given any priority, I

would very respectfully submit that they should not be given a greater priority than the wage earners who earned this income. If it is to be given a priority I would say that it must go in there and be coupled with the wage earners, because it is rather unreasonable to think that those who earned these wages do not get an equal priority with the funds that they never saw or received.

Hon. Mr. FOSTER: In other words, you contend that these are of equal importance with the Crown's claim for income tax?

Mr. REILLEY: Yes; there is no particular difference.

Hon. Mr. LEGER: The Crown can afford to lose it but the wage earners cannot?

Mr. REILLEY: That is quite right. I am in sympathy with that proposition.

The ACTING CHAIRMAN: Does there not appear to be a conflict between the Income War Tax provisions and this statute? It is purported to give them a priority irrespective of the provisions of the Income War Tax Act.

Hon. Mr. LEGER: There would be a conflict if legislation was enacted the way it is now drafted.

Mr. REILLEY: That is so. That is the difficulty we have had to contend with during the last number of years as between the bankruptcy administration and the war revenue department.

Hon. Mr. McGUIRE: Do you think, Mr. Reilley, that you have drawn up a plan for dealing with all priorities?

Mr. REILLEY: I have a plan for dealing with all priorities, which takes on the provinces and everybody; and I think it puts them in as general a category as can be found.

Hon. Mr. McGUIRE: They are all claiming in the right of the Crown?

Mr. REILLEY: They are all claiming in the right of the Crown. Everyone stated following page 84 are in the right of the Crown. In this new draft Bill I am trying to set up a workable scheme so that the trustee can turn to his bankruptcy Act and say, "Here is how I have to prepare my dividend sheet." A great many of my trustees are laymen, farmers and bankers located in different places. They cannot be expected to know all the intricacies involved in these different priorities. In a great many cases they communicate with me and ask what they should do. It is not really my business to instruct them, but I try to assist them. I confess, gentlemen, that at the present time I cannot instruct any trustee as to what the proper system of priority is in the dividend sheet under the Dominion and Provincial legislation as it now exists.

Hon. Mr. McGUIRE: You could do so under this proposed bill?

Mr. REILLEY: I could do so under this bill. This is a system of priorities that I think is fair. That is what is done under the Australian act. I have that act with me and I can read it to you to show how the distribution sheet is set up. The same applies to the United States. The federal and state claims are given the same precedence as they are here.

I have other comments that I could make on this, if necessary, in regard to the difficulties that are presented. For instance, in a case where a man borrowed money to pay his employees the net amount of their wages, the court held that he was presumed to have borrowed from the bank enough more to pay the Crown. That is a new proposition to me, as a lawyer. The result is that if collection is insisted on and if those funds are paid to the department, it is quite possible and almost certain that in the final analysis those deductions will have to go back to the employee. They are only deducted; they are not assessed and claimable by the Crown. And, as you know, these things sometimes stand over for years. Is a trustee going to keep an estate open for years in the expectation that certain of these funds will be turned back to the trustee? If his priority is given, those funds might be payable to some other person

instead of the wage earner. Such a confused situation is created in the administration of an estate and drawing up of a dividend sheet that it is practically impossible for the trustee to get on with it.

Hon. Mr. COPP: Suppose a bankrupt owes \$1,000 that he has retained from his employee's wages. I understand Mr. McEntyre's suggestion to be that that amount should be made a preferred claim against the bankrupt. Is that your suggestion, Mr. McEntyre?

Mr. McENTYRE: I have no particular brief as to whether that should be a preferred claim. I am simply here to point out that if the bankruptcy bill were enacted in its present form there would be a conflict between the two laws, and that conflict would make it very difficult for the income tax administration to know exactly where it stood.

Hon. Mr. McGUIRE: Would there not be a conflict with respect to many of these other things which are also made a first claim by statute?

Mr. McENTYRE: I imagine there would be in some cases. The point here is that this particular provision of the Income War Tax Act was enacted by the Dominion Parliament as recently as last September, and it would seem rather extraordinary to have another enactment so soon afterwards which conflicted with it. I certainly appreciate what Mr. Reilley said as to the difficulty in preparing a dividend sheet, in the face of the large number of conflicting priorities in dominion and provincial statutes. I am certainly in favour of Mr. Reilley's suggestion that the matter be cleared up in the Bankruptcy Act, which would be a central place.

Hon. Mr. LEGER: Mr. Reilley may have drafted his bill prior to your enactment.

Hon. Mr. McGUIRE: Your amendment is to make your claim a preferred claim on the funds in the hands of the trustee. In addition, under your act you have a claim against the employer, making him a debtor to your department. So if you did not get the money out of the funds you would still have a claim against the employer. You also say he is your agent. Therefore he would owe you the money personally and you could pursue him apart from any funds that might be in the hands of the trustee.

Mr. McENTYRE: I think that is correct, sir. We have taken two positions we have said, first of all, "If you have the money you are the trustee and the funds belong to us," and then, "if you have not the money, we have a claim against you for the money."

Hon. Mr. McGUIRE: He owes it to you as a debtor, and he owes it to you as your agent, and you are claiming it through the trustee in bankruptcy. You have about three claims against him for the money, so you should get it in some way.

Mr. McENTYRE: The purpose of our department is to get the money.

Hon. Mr. McGUIRE: I do not think the trustee in bankruptcy should be in the position of not knowing to whom he has to pay the money. I do not see how any trustee, after looking at all these statutes of the provinces and the dominion, could finish with any estate, or how he could know whether his system was going to be a defaulter. I think we should provide him with a system whereby he can come to some conclusion in the matter, and it seems to me that is what this bill provides.

The ACTING CHAIRMAN: Are there any other questions on this particular point? If not, will you proceed with the other point, Mr. McEntyre?

Hon. Mr. LEGER: Mr. Chairman, we will deal with the suggestion Mr. McEntyre has made when we come to consider the bill later.

Mr. McENTYRE: The second point I would like to make refers to section 43, subsection (13), which restricts the duties of the trustee. The Income War Tax Act imposes upon the trustee the obligation to file income tax returns. Section 37 of the Income War Tax Act provides as follows:

Every trustee in bankruptcy, assignee, liquidator, curator, receiver, administrator, heir, executor and such other like person or legal representative administering, managing, winding-up, controlling, or otherwise dealing with the property, business or estate of any person who has not made a return for any taxable period or for any portion of a taxable period for which such person was required to make a return in accordance with the provisions of this Act shall make such return.

The Taxation Division has experienced some difficulty in obliging the trustees to prepare and file statements of profit and loss, returns showing salaries and wages paid and the tax deductions therefrom and other information returns in the case of debtors in bankruptcy. The trustees explain that to provide this information and to make up the necessary returns entails considerable time and expense which they are not permitted to charge against the assets of the estate. The argument is that the obligation to file these returns is personal to the debtor and that the creditors should not be obliged to suffer the expenses of having this work done. On the other hand, the books of account are all in the hands of the trustee and even if they are available to the debtor he may not have the necessary capacity to compile the information. Naturally the debtor who is in bankruptcy has not the means to employ qualified persons to make up the returns for him. In virtue of the semi-official capacity of the trustee in bankruptcy, the Taxation Division have refrained from taking legal action against trustees who have refused to comply with section 37 quoted above.

It would seem to be an opportune time when the Bankruptcy Act is being re-drafted to make some provision, either by a provision in the Bankruptcy Act or by an administrative ruling of the Superintendent of Bankruptcy, to assure the Taxation Division in obtaining compliance with section 37 of the Income War Tax Act by permitting the trustee to charge a reasonable fee for his time in completing the income tax returns which are required of the bankrupt debtor.

In this connection reference should be made to section 43, subsection (13) of the bill, which reads as follows:

The trustee shall be required to perform only the duties specifically imposed on him under this Act or the Rules or a court order made thereunder notwithstanding any Act or Statute to the contrary.

The explanatory note with respect to this section is:

In many cases attempts have been made to impose duties on a trustee in no way related to the administration of the estate, such as filing returns of one type or other which the bankrupt failed to do. It is a perversion of justice to try to make a trustee responsible for the misdeeds of others.

In view of the fact that section 37 of the Income War Tax Act is particularly directed to trustees in bankruptcy, it would appear to be extraordinary for the same legislative body to purposely contradict itself in two Statutes. In order to make the Bankruptcy Act consistent with the Income War Tax Act, it is suggested that section 43, subsection (13) be made to read as follows:

The trustee shall be required to perform only the duties specifically imposed on him under this Act or the Rules or a court order made thereunder or the Income War Tax Act notwithstanding any Act or Statute to the contrary.

Hon. Mr. McGUIRE: You refer to the Income War Tax Act as a whole. That would make the trustee a trustee under that act as well as under the Bankruptcy Act.

Mr. McENTYRE: The thought there was that the debtor is under certain obligations—to file returns and to furnish information—in addition to the obligation to pay his tax when assessed. Those are the same obligations that all taxpayers are under. As the trustee takes over the property of the debtor he represents the debtor, and therefore it seems correct that part of his duties should be to fulfil the obligations of the debtor, both as to completing the returns and filing them, and as to paying the tax in accordance with whatever the proceeds of the estate realize.

The ACTING CHAIRMAN: Suppose the debtor is four years in arrears, would the trustee be under obligation to make returns for the four years?

Mr. McENTYRE: Yes.

The ACTING CHAIRMAN: It might be impossible to do so.

Mr. McENTYRE: Well, the trustee is naturally a responsible person who is licensed and so on, and we would expect him to do the best he could.

Hon. Mr. GERSHAW: Would this not hold up the work of the trustee almost indefinitely? In some cases the income tax is not assessed for four or five years.

Mr. McENTYRE: I imagine it would cause delay.

Hon. Mr. McGUIRE: According to your proposed wording a trustee under the Bankruptcy Act would also be a trustee under the Income War Tax Act. Could you cover your point by naming a couple of sections of the Income War Tax Act specifically instead of referring to the whole Act? If a trustee has to read through the whole Act he will have difficulty in knowing just what his duties are. The whole thing would be simplified very much if he could refer to a couple of specific sections.

Mr. McENTYRE: Yes

The ACTING CHAIRMAN: Is not section 37 the only section of the Income War Tax Act imposing a duty upon a trustee?

Mr. McENTYRE: No, sir; there are other sections.

Mr. REILLEY: Sections 50 and 51.

Mr. McENTYRE: Section 50 says:—

Every person who is required by section thirty-seven of this Act to make a return of income shall pay any tax and interest and penalties assessed and levied with respect to such income before making any distribution of the property, business or estate which he is administering, managing, winding-up or otherwise controlling or dealing with.

Section 51:—(1) Every trustee in bankruptcy, assignee, administrator, executor and other like person, before distributing any assets under his control shall obtain a certificate from the Minister certifying that no unpaid assessment of income tax, interest and penalties properly chargeable against the person, property, business or estate, as the case may be, remains outstanding.

(2) Distribution without such certificate shall render the trustee in bankruptcy, assignee, administrator, executor and other like person personally liable for the tax, interest and penalties.

Hon. Mr. HUGESSEN: May I ask Mr. Reilley a question on this subsection (13), Mr. Chairman?

The ACTING CHAIRMAN: Certainly.

Hon. Mr. HUGESSEN: Suppose a trustee is administering the estate—in some cases bankruptcy lasts for years—and continuing the operation of the business, whatever it may be, does this subsection mean that during that period the trustee shall not be required to make returns to the dominion and provincial authorities?

Mr. REILLEY: If the subsection could be interpreted that way.

Hon. Mr. HUGESSEN: That is what I am asking.

Mr. REILLEY: The trustee must naturally bring himself within any laws which apply to the carrying on of the business.

Hon. Mr. HUGESSEN: It may be that in other parts of the bill you do define the duties of the trustee.

Mr. REILLEY: I do not.

Hon. Mr. HUGESSEN: Then I think you have to reconsider that subsection.

Mr. REILLEY: I would be quite agreeable to do so.

It might be well to say a few words in regard to this section. I want to assure the committee as an official of one department of the government I would not want to do anything that would affect another department from carrying out its duties; for instance, the Revenue Department from collecting every cent coming to it in income tax. But you can see the arbitrary nature of this section. It may be that the section is ultra vires. A trustee in bankruptcy is not the legal personal representative of any person. He is an entity created by statute in whom is vested certain assets which at one time belonged to some other person. In other words, he is not the legal personal representative of the debtor in any other respects except as the owner of the vested rights or assets that formerly belonged to the debtor. He is in exactly the same position as a corporation which takes over the assets of a company or individual and issues stock; the corporation is not in any way responsible for anything that the former owner may have done personally.

Hon. Mr. LEGER: Except he would be liable if made so liable by statute.

Mr. REILLEY: Yes.

Hon. Mr. LEGER: The Income War Tax Act makes him liable if it is ultra vires.

Mr. REILLEY: I am going to carry the argument a little further. He is in exactly the same position as if a third person came along and bought those assets and paid for them. Those assets are vested in him by operation of law. Is it reasonable to say that parliament could make that third person responsible for supplying income tax returns of the man whose assets he bought? Legally, that is the trustee's position under the well-established principles of bankruptcy law, that he does not represent the debtor but is a legal entity created by operation of law. Consequently if that section is not ultra vires, it is at least open to a good argument that it is.

The ACTING CHAIRMAN: There is just one question on that point Mr. Reilley. I think there is a section in the Income War Tax Act which enables the department to assess for income tax irrespective of whether there is a return made or not. Supposing the department felt there was a liability for tax, but returns had not been made for it, and the department made the assessment, would not the trustee then have to make a return in order to ascertain whether or not there was a debt?

Mr. REILLEY: He could disallow that claim.

The ACTING CHAIRMAN: He could arbitrarily disallow it?

Mr. REILLEY: He could disallow it and it would have to be set up by the court.

That, gentlemen, leads me to another section of the bill dealing with the rights of the Crown, section 193 on page 115:

Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a bankrupt, the priorities of debts, the effect of a composition and the effect of a discharge, shall bind the Crown.

That section has been in the Bankruptcy Act ever since it was enacted on the 1st of July, 1920, and the courts have held that that puts the Crown in exactly the same position as any other creditor: it must prove its debt. If the trustee disallows the debt the Crown can appeal, and if it does not appeal within the proper time it has lost its rights and the trustee can make out his distribution sheet, disregarding the Crown. As you can see, this and these other sections have created an almost impossible situation. The section providing for a trustee getting a certificate is directly in conflict with this section, which says that the Crown must prove its debt just the same as any other creditor.

Hon. Mr. GOUIN: What section are you speaking of?

Mr. REILLEY: It was referred to by Mr. McEntyre—section 50 of the Income War Tax Act. Consequently the trustee here is again in a quandary as to what he should do. All he has to say to the Crown is: Prove your debt. Suppose he disregards this filing of income tax returns, and the Crown does not prove its debt, what can we do to him? I have had to advise trustees—against my will—when the issue is involved: Go ahead and make your distribution sheet, and if the department does not file its claim the courts will protect you and you will be under no liability to the department of Income Tax. Here you have these conflicting situations, which at times are hardly reasonable, and the trustee is placed in a position which is not consistent with good straightforward administration. Besides, when a trustee takes over the records of a debtor in order to ascertain what the assets and liabilities are so he can carry on the administration of the estate, he is a stranger to the debtor and is not in a position to know what the debtor knows to enable him to file an income tax return. A good deal of the information necessary to file income tax returns, particularly when you get into an involved bankrupt estate, depends on the knowledge of the debtor, and the trustee being without that information simply cannot file any returns.

Hon. Mr. HUGESSEN: Surely he should file income tax returns where he carries on the business for some years?

Mr. REILLEY: Yes. If he carries on the business as a trustee naturally he must be subject to the same requirements as other people, and he would have to file his income tax returns; and if there is any tax payable he would have to pay it.

Hon. Mr. FOSTER: You mean up to the time the trustee takes charge?

Mr. REILLEY: Yes.

Hon. Mr. GOUIN: But, Mr. Reilley, if up to the time the trustee takes charge there is what we call in law a privilege, it affects the estate of the bankrupt, and any third party applying must be satisfied that the privilege of the Crown, for instance, for income tax is duly taken care of. That is why we are always careful to obtain a clearance from the income tax department.

Mr. REILLEY: No, Senator, there is no privilege.

Hon. Mr. GOUIN: But in the province of Quebec, as I look at the matter from the point of view of the civil code, the privilege of the Crown ranks first for instance, its priority for certain taxes. Therefore I do not understand you when you say bluntly, "There is no privilege."

Mr. REILLEY: I was referring to income tax, Senator.

Hon. Mr. GOUIN: I am referring to privileges. I say we have always taken the position that it was up to a party to verify the privileges. Some of them, such as mechanics liens and so on, can be verified at the registry office, and others may be what I call privileges concerning the Crown, whatever those privileges may be.

Hon. Mr. LEGER: You have not covered mechanics liens?

Mr. REILLEY: This does not interfere with secured creditors. Whatever rights the secured creditors have by privilege or otherwise they are still protected in the act.

Hon. Mr. GOUIN: But are they protected under section 126? As I read that section it gives the order of rank as the paragraphs are lettered. For instance, paragraph (a) covers the funeral expenses. If there is nothing else the undertaker at least would be paid.

Hon. Mr. HUGESSEN: I think the answer to section 126 is that it does not dispose of the rights of a privileged creditor to realize his securities. It deals only with the assets which the trustee has realized.

Mr. REILLEY: That is right. This does not presume to interfere with secured creditors and their rights or otherwise set up in the act.

The ACTING CHAIRMAN: Mr. Reilley, the words "contractual secured creditors" are used there. Might that not cut out the creditors secured by statute? Section 126 says "subject to the rights of contractual secured creditors—"

Hon. Mr. LEGER: I think the word "contractual" would have to be struck out.

Hon. Mr. HUGESSEN: Yes.

Mr. REILLEY: When I speak of secured creditors I am thinking of mechanics liens which have been duly registered and that sort of thing. That was put in so that all Crown claims would be in this category.

Hon. Mr. HUGESSEN: Does that word "contractual" affect it Mr. Reilley? I would not think a man secured by a builder's lien would have a contractual security.

Hon. Mr. LEGER: No, that is by virtue of the statute.

Mr. REILLEY: Well, gentlemen, it is hard to think of all these things when drafting a bill.

Hon. Mr. McGUIRE: To what subsection are you referring?

Mr. REILLEY: We are referring to 126 (1). If there is anything that needs correction I should be the first to want it revealed. I had in mind contractual creditors as compared with statutory creditors, particularly the rights of the Crown which I wanted to have set up to get over this situation shown in my memorandum.

Hon. Mr. LEGER: I think Mr. McEntyre's point is that it is not so much a question of the amount of money that the Crown is to lose, but it is simply that the new statute would be conflicting.

Mr. McENTYRE: That is correct.

Mr. REILLEY: As I have said before, I am quite in agreement with Mr. McEntyre that the Crown should get all the money that is coming to it.

Hon. Mr. LEGER: But that is not his point. He is not objecting because the Crown stands to lose money but because the two statutes are in direct conflict. I think that is the point he is making.

Mr. McENTYRE: That is correct.

HON. MR. MCGUIRE: When Mr. McEntyre was speaking he referred to section 43, subsection 13, and suggested an amendment to make the trustee carry out the sections of the Income War Tax Act. Section 43, subsection 13, reads:

The trustee shall be required to perform only the duties specifically imposed on him under this Act or the Rules or a court order made thereunder notwithstanding any Act or Statute to the contrary.

If the trustee did not allow a claim the party in question could go to the court and get an order; in other words, the trustee is not excused in any way. Anyone who has any grievance can go to the court and get an order requiring him to acknowledge the claim. This section does not cut anybody out. I think Mr. McEntyre's suggestion was whether this section should be amended to require the trustee specifically to undertake the duties under the Income War Tax Act.

MR. MCENTYRE: That is correct, sir.

HON. MR. MCGUIRE: Our problem is whether there should be an amendment to subsection 13 of section 43 which will make the trustee carry on under the Income War Tax Act as well as under the Bankruptcy Act.

MR. MCENTYRE: That is correct, sir.

HON. MR. MCGUIRE: That is the problem before us at the moment.

MR. REILLEY: But, gentlemen, what the department is interested in is getting its money. That is the purpose of its own legislation. I suggest that we can arrive at that conclusion in an entirely agreeable and amicable way without conflicting legislation and I am willing to submit a means by which it can be done. I have been trying for thirteen years to obtain co-operation along this line, but I have met with no success: Instead of imposing upon the trustee this duty, which I think is *ultra vires*, and which at least is unreasonable, it can be done simply in this way: the department must file its claims under section 93 of the act. I think there should be some co-operation to enable the Crown to achieve its purpose. Originally the trustee was required to make an examination of the books; it need not be an audit, but a casual examination of the books of the debtor to see what the situation was. And if the trustee, who is a reliable person—he must be, because trustees are answerable to me if they do not do their duty—if he finds anything in the books to indicate that income tax was not paid as it should have been, I would consider that he should advise the department, and they themselves could come and set up their own claim by going through the books. There is nothing to prevent their doing so.

HON. MR. MCGUIRE: Under the bill the government is the same as an ordinary creditor putting in his claim before the trustee; but if we put in the amendments suggested by Mr. McEntyre then the trustee would have a duty under the act to the department, and he would have to go to the department to find out what it is.

MR. REILLEY: Yes.

HON. MR. MCGUIRE: It is a transfer of the duty.

MR. REILLEY: It is a transfer of the obligation. Then, as I say, the conflict again is that the department must file their claim under the act, and section 93 so says. If they do not do so the trustee can disregard it. Here he is on the horns of a dilemma.

HON. MR. MCGUIRE: All creditors who do not make their claims to the trustee in time are barred by section 93.

THE ACTING CHAIRMAN: Are there any more questions of Mr. Reilley? Is there anything further you would like to say, Mr. McEntyre?

MR. MCENTYRE: I should like to say a word about the returns. I think in practice we do actually file proof of debt in bankruptcy. In order to do that we have to be able to assess the tax; we must know the profits. The ordinary

procedure required by the Bankruptcy Act is that the taxpayer will furnish the information on his return on which the assessment is to be based. The obligation we are imposing on the trustee in bankruptcy to furnish that return is just the same obligation that is imposed on all taxpayers, and as he takes over from the debtor it seems reasonable that he should be the man to furnish that return. He has the books and the material before him, and can easily prepare the necessary returns or advise us that there was no profit and no tax should be assessed.

Hon. Mr. McGUIRE: But you change his character altogether. The trustee is dealing only with the assets in his hands that come to him under the operation of the act; you are making him the same as the man who became bankrupt; you are giving him another character, that of debtor to the government, and requiring him to carry on as such. You have the right to pursue the debtor as an individual as long as you wish. The trustee is dealing only with the property that he received from the debtor; he should not be himself made a debtor. The next thing, you would be asking him the year after he got a court order releasing him to make a report to your department. He is not the same as an ordinary debtor. He is just a man who has received certain assets to dispose of.

Mr. McENTYRE: But he has received the books and he takes over the assets subject to secured claims.

Hon. Mr. McGUIRE: He has received the books for a time, only until he has disposed of these assets and got an order saying he is through.

Mr. McENTYRE: As I understand it, from conversations with trustees in bankruptcy, in the old days they prepared these returns. It was only in fairly recent years that they were instructed that the expense of preparing the returns was not a proper charge on the creditors of the estate, and that they should not prepare these returns and charge a fee for doing so. If the debtor on the day before his bankruptcy had engaged an accountant to prepare his income tax returns and has spent considerable money doing so I do not think there would be any fault to be found in his having spent the money in that fashion. Then, why on the day following the bankruptcy should the trustee in bankruptcy not be permitted to incur the necessary expense and spend his time in the preparation of these forms?

Hon. Mr. McGUIRE: He does it in practice, does he not?

Mr. McENTYRE: No, in the great majority of cases, if there is any great amount involved, the trustee will not prepare the income tax returns, because he says that he cannot afford to do that as he is not entitled a fee for doing so.

The ACTING CHAIRMAN: How have you dealt with such matters during the past few years?

Mr. McENTYRE: It has been rather unsatisfactory. In some cases the trustee will file returns; in other cases he will advise us that he has looked at the books and finds that there was very little profit made the year before, or that the assets of the estate will not be sufficient to provide anything for income tax, and we accept his word on that. Then, if there is something involved we have to send our assessors to look at the books and make a return themselves.

The ACTING CHAIRMAN: You always have that privilege?

Mr. McENTYRE: Oh, yes.

Hon. Mr. McGUIRE: You can also get an order of the court under this section as it stands.

Hon. Mr. ASELTINE: What is the difference between the liability to file an income tax return on the part of a trustee of a deceased person and a trustee in bankruptcy?

Mr. REILLEY: They are in the same position.

Hon. Mr. ASELTINE: The trustee of a deceased person's estate cannot get a discharge until he gets a release from the income tax department, and I think the trustee in bankruptcy also should not be able to get a discharge until he has a release from the income tax department.

Hon. Mr. MCGUIRE: The debtor in one case has disappeared, but in the other case he continues.

The ACTING CHAIRMAN: The bankrupt is still liable to make his returns.

Hon. Mr. ASELTINE: But he has nothing to pay to the income tax department after he has made an assignment in bankruptcy.

The ACTING CHAIRMAN: We have covered the point thoroughly, I think. Are there any further questions?

Mr. REILLEY: I think this is a proper case for the two departments to get together and work out a scheme that will be satisfactory to both. I have tried to do that for many years.

Hon. Mr. COPP: Why have you not succeeded?

Mr. REILLEY: I could not get any cooperation from the Department of National Revenue. They just sat tight on this and would do nothing. I am satisfied that if they are given a strong impression from this committee or someone else that something different must be done, we can get together and work out a scheme that will be satisfactory to both of us.

Hon. Mr. MCGUIRE: The suggestion of Mr. McEntyre is to make the trustee in bankruptcy a trustee under the Income War Tax Act as well. I do not think that should be done. It seems to me it would be much more reasonable to have the trustee in bankruptcy made liable under one or two sections of the Income War Tax Act. If Mr. Reilley and Mr. McEntyre get together they can possibly work that out.

The ACTING CHAIRMAN: Are there any further questions? If not, we have concluded the evidence for to-day. We thank you for the clear statements you have made to us, Mr. McEntyre, and we will take your submissions into consideration. I think you can gather from the questions that have been asked and the comments made here that the feeling of the committee is that there is a clear conflict between the Income War Tax Act and the Bankruptcy Bill. The Income War Tax Act seeks to establish priority of claim in a bankrupt estate, whereas Mr. Reilley's Bankrupt Bill proposes to codify more or less the rights and priorities of claimants. It seems to me that it would be advisable for Mr. Reilley and someone from the Department of National Revenue to get together and see if they cannot clarify these questions, and make any further submissions they may care to make. Would that be agreeable to the committee?

Hon. MEMBERS: Agreed.

The Committee adjourned to the call of the Chair.



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THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 6

WEDNESDAY, JULY 31, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy.

Mr. A. W. Rogers, K.C., Montreal, P.Q., Secretary, The Canadian Bankers' Association.

APPENDIX:

Brief filed by Mr. A. W. Rogers, K.C.

OTTAWA

EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	Michener
Beaubien (<i>Montarville</i>)	Foster	Molloy
Beauregard	Gershaw	Moraud
Buchanan	Gouin	Murdock
Burchill	Haig	Nicol
Campbell	Hardy	Paterson
Copp	Hayden	Quinn
Crerar	Howard	Raymond
Daigle	Hugessen	Riley
David	Jones	Robertson
Dessureault	Kinley	Sinclair
Donnelly	Lambert	White
Duff	Leger	Wilson—(47).
DuTremblay	Macdonald (<i>Cardigan</i>)	

MINUTES OF PROCEEDINGS

WEDNESDAY, July 31, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present:

The Honourable Senators: Beauregard, Chairman; Asseltine, Burchill, Gershaw, Gouin, Haig, Hardy, Howard, Hugessen, Jones, Kinley, Leger, Macdonald (*Cardigan*), McGuire, Moraud, Robertson, Sinclair, White.—18.

In attendance: Mr. J. F. MacNeil, Law Clerk and Parliamentary Counsel of the Senate.

Bill A-5, An Act respecting Bankruptcy, was further considered.

Mr. W. J. Reilley, K.C., Supt. of Bankruptcy, was again heard.

Mr. A. W. Rogers, K.C., Montreal, P.Q., Secretary, The Canadian Bankers' Association, submitted a brief and was heard.

Further consideration of the Bill was postponed.

Attest.

R. LAROSE,
Clerk of the Committee.

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MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, July 31, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A5, an Act respecting bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the chair.

The CHAIRMAN: Gentlemen, we are to hear from Mr. A. W. Rogers, K.C., Secretary of the Canadian Bankers' Association.

Mr. ROGERS: Mr. Chairman and honourable senators, we realize that it is very difficult for any one drafting legislation designed to remedy certain evils to cover the ground adequately without perhaps going a little too far one way or the other. The study being made by your Committee, and the opportunity afforded various interests and organizations to present what, we hope, are constructive criticisms, will, I think, help materially in making the legislation more effective. My own experience years ago in drafting legislation impressed on me that sometimes there is a tendency for the draftsman in trying to remedy an evil to cut too wide a pathway and so get into territory that he would rather not have touched. It is only when an opportunity like this is afforded to discuss the matter generally with the public before a tribunal such as yours that the pertinent points can be brought out. Any submissions we may make are intended to be not merely critical but, we hope, constructive, and we trust they will have some beneficial effect.

There are some points arising from interpretation which I think can better be dealt with in connection with some of the sections, but there is one particular definition I might mention, that of "creditor" in section 2 (a). This definition has now been amended to include a secured as well as unsecured creditor. No doubt the definition in general terms of a creditor would have sufficed, but when you specifically mention that it is to include secured creditors, it has certain effects, as will appear from consideration of certain sections of the Bill that are related to the definition. For instance, in section 19, subsection 1:—

A composition accepted by the creditors and approved by the court shall be binding on all creditors with claims provable under this Act, but shall not release the debtor from the debts and liabilities referred to in section one hundred and fifty-four of this Act except to such an extent and under such conditions as the court expressly orders in respect of such liability.

By that broad phraseology the composition would be binding on all creditors, including secured creditors, by reason of the specific definition; whereas, it was probably the intention that it would be binding only upon the creditors who had not had an opportunity of obtaining securities for their debts.

In section 26 the same question arises with respect to a stay of proceedings. The first subsection provides generally that during the bankruptcy of a person or on the filing of a proposal of composition no creditor shall have any remedy against the person who is to be put into bankruptcy "or shall commence or continue any action, execution or other proceedings for the recovery of a debt provable in bankruptcy," unless with leave of the court. As the provision stands in the Act, subsection 2 went on to deal with the position of secured creditors and it stated that, "subject to the provisions of certain other sections, any secured creditor may realize or otherwise deal with his security as if this section had not been passed, unless the court otherwise orders." This of course is quite a proper proceeding, for if the court felt a secured creditor should not realize his security, it might on special representations make an order requiring the secured creditor not to realize.

Hon. Mr. LEGER: The only change would be the necessity of applying to the court: that is the only effect, is it not?

Mr. ROGERS: The change would be to overcome the effect of subsection 2 of the Act and require a secured creditor to get leave in every case before realizing his security. That is because of the new definition of creditor and the addition to subsection 2 of the words "and the preceding subsection." This completely nullifies the intention of subsection 2, which was to remove the secured creditor from the restrictions of subsection 1.

Hon. Mr. HUGESSEN: Your objection is to the words "and the preceding subsection"?

Mr. ROGERS: Yes. The effect is brought about by those words and also by "creditor" as now defined. The new definition of the word includes a secured creditor. So the original provision whereby a secured creditor was given certain freedom of action is offset and really nullified.

Hon. Mr. MORAUD: What was the definition before?

Mr. ROGERS: It is in the bill on the right hand side.

Hon. Mr. MORAUD: Oh, yes.

Mr. ROGERS: It was not a general definition, it was specific with relation to particular cases. But the effect of the specific amendment is perhaps dangerous, having regard to the effect of its inclusion in the Act in that way.

Hon. Mr. MORAUD: The former definition was too long, and this one is too short.

Mr. ROGERS: Then there is another point in the definition of the word "transaction". It is so general that it would be very difficult to imagine anything that would not come within the transaction. While it is quite true that it is necessary to define some words in order to prevent a lot of repetition, particularly in section 68 and others, the new definition seems to cover so wide a field that it goes beyond what is now in the Act.

Hon. Mr. LEGER: Would it be necessary to define it at all?

Mr. ROGERS: I think the court would define transaction as being a business dealing of some sort.

Hon. Mr. MORAUD: "Transaction" in our civil code has not the same meaning at all as "transaction" in this bill.

Mr. ROGERS: It is so difficult to say what might be meant by "anything done or left undone by a person which affects another person's rights and obligations out of which a course of action may arise". It is so broad that it is rather difficult to say what its effect might be. Section 64 of the Act commences,

Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered . . .

It was in that sense fairly precise and rather limited, but the definition in this bill is very broad, and it is difficult to know just how far its effects may go. Perhaps when we come to one or two of the other sections its effects will be a little more apparent.

Section 3 covers acts of bankruptcy. The inclusion of a new act of bankruptcy in paragraph (d) of this section goes somewhat further than the preceding paragraph (c), which deals with something of that nature. It reads:—

If in Canada or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this Act be void as a fraudulent preference if he were adjudged bankrupt.

No one could quarrel with that.

Paragraph (d) covers:—

Any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would have the effect of defrauding, delaying or defeating his creditors or any of them.

Hon. Mr. LEGER: In other words, he could not mortgage his property.

Mr. ROGERS: It is just a question whether under certain circumstances a mortgage which might be taken and given in all good faith would come within this, because undoubtedly it would have the effect of delaying or defeating his creditors or any of them. That is, one creditor might be defeated by the giving of a certain security; there might be no fraud intended, yet it would be an act of bankruptcy. Our feeling is that it goes further than should be necessary.

I turn now to page 6. Paragraph (i) of section 3 relates to bulk sales. Under the paragraph in the Act a bulk sale made without complying with the requirements of the provincial laws would be an act of bankruptcy. But the phraseology now is such that the whole purpose of the paragraph is changed, and if anyone makes a bulk sale "wherein the sale price will not be sufficient to pay his creditors in full" that sale constitutes an act of bankruptcy. The danger is that a man might make a bulk sale and the proceeds would be insufficient to pay his creditors in full, but he might have other assets, including bank deposits, from which the balance of his creditors' claims could be paid, but the definition could result in his being forced into bankruptcy regardless of his real financial position.

Hon. Mr. LEGER: That would come in conflict with our provincial Bulk Sales Act.

Mr. ROGERS: Perhaps it calls for a sale under the provincial law, but it states that an act of bankruptcy will have been committed if the sale price is not sufficient to pay all creditors in full. It ignores the fact that there might be other assets, so the sale would be perfectly sound and the man absolutely solvent. Perhaps the amended paragraph is cutting too wide a swath from that point of view.

In paragraph (i) of section 3 we find another point of difficulty. It is an act of bankruptcy if the man "ceases to meet his liabilities generally as they become due." That, of course, has always been in the Act. But the paragraph is amended to read:—

... or fails to pay any particular debt or debts after repeated demands for payment.

If it is going to constitute an act of bankruptcy when a man fails to pay any debt after repeated demands for payment, it would constitute a very serious encroachment on the right of an individual to contest claims of debt on sound legal grounds. While there may have been some cases of uncertainty, as Mr. Reilley states, it seems to me that where a man might be stalling and too much delay might result in the loss of some assets, it is just a question whether legislation should go so far as to make it difficult for others to do business with a man, and certainly this amendment would expose the individual to threats of bankruptcy proceedings at the hands of an unscrupulous creditor unwilling to establish his claim to the debt in the civil courts. It seems to us to be going too far.

There is a small point in section 18, subsection 11 on page 18 of the Bill, which we wish to make.

The subsection provides:—

On the filing of a proposal the property of a person not bankrupt shall be deemed to be under the custody of the court until the proposal is finally disposed of by the court and any alienation thereof except in the normal course of business shall be null and void.

We think this probably means any alienation by the debtor. But actually there might be property of the debtor on which he has given a valid security in such a way that the person who holds that security is entitled to realize on it, and normally make good title. This new subsection would throw a cloud on that title if it is going to cover alienation by anybody of the property of the debtor. We think it would be better to clarify the wording by stating "any alienation by the debtor." This is no doubt the intention of the subsection.

In section 39, subsections 11, 12, and 13, there is a small point on administration. It is quite proper that the Superintendent should have access to the bank accounts or any other information he might want. The difficulty is that banks, by reason of the contract between depositor and banker, are under an obligation of secrecy. That obligation is so strong that if a bank discloses its customer's affairs it is liable in law. So the banks before giving information would want to be sure that they were giving it to properly authorized persons. The Superintendent could not do all the work himself, and presumably he may retain accountants to do it on his behalf. We suggest therefore that the Superintendent have power to authorize a person to act on his behalf. Then if that authorized person comes to a bank to secure information the bank would be protected. That is the usual procedure under the Income War Tax Act and a number of other statutes, both Dominion and provincial, where it is necessary to have access to bank accounts.

Hon. Mr. MORAUD: Don't you think, Mr. Rogers, that that again is an invasion by an officer of the department, of the jurisdiction of our courts? If an investigation is to be made, it should be made under the direction of our courts.

Mr. ROGERS: It is certainly more desirable. But we have had to submit with the best grace possible to similar provisions in Dominion as well as provincial legislation, where an officer is clothed with certain powers, as under the Securities Act and the Income War Tax Act and the Excise Act, and can examine bank accounts. It certainly would be more desirable if all this could be done under the aegis of the courts, as the honourable senator suggests, but in view of what has already happened we could scarcely urge that. All we can ask is that there be a clear-cut delegation of authority. If that is to be the case, we shall have to submit with good grace.

Hon. Mr. MORAUD: I submit that this should be done under the direction or authority of a court of justice.

Mr. ROGERS: There is something of that, sir, in subsection 12:—

The Superintendent or anyone in his behalf may with the leave of the court examine the private books, records and documents and bank accounts of a trustee. . . .

That brings in the principle there.

Hon. Mr. MORAUD: There is nothing of the kind in subsection 11.

Mr. ROGERS: No, there is nothing of that nature in subsection 11. It goes your way in subsection 12. But it is just as you honourable senators wish in matters of that sort. As I say, we have to submit with grace, as many others have, to requirements of that nature where investigations are conducted by representatives of the Crown without the authority of the court, but under the authority of a statute. We always insist on absolute compliance with the requirements of the order of the court or the statute, because otherwise we would be liable, and financially we cannot afford to accept that liability.

Sections 68 and 69 have given rise to a considerable amount of doubt as to their effect on banking transactions as well as others. Section 68 will be found on page 54 of the Bill. Subsection 1 provides:

Every transaction—

which, as you have seen, is very broadly defined now.

—whether or not entered into voluntarily or under pressure by an insolvent person becoming bankrupt within three months thereafter resulting in any person or any creditor or any person in trust for such creditor or any surety or guarantor for the debt due to such creditor obtaining a preference advantage or benefit over the creditors or any of them shall be deemed fraudulent and void as against the trustee.

The danger of that broad provision, it seems to us, is that the question of intent is no longer an element. It is still a pretty general requirement in almost all criminal offences that intent is an element of the deed and, in many cases, a man is entitled to bring in evidence that his intent was honest or proper, and the intent may vary considerably the gravity of the crime. Yet here the effect alone is to be the arbiter of the situation. If there is any "advantage or benefit over the creditors or any of them"—which means any one of them—the transaction is deemed to be a preference, and the person that took part in it is tainted with fraud. That is almost as bad as being tainted with criminality, because no one wants to be put in a position of that sort. A man may have entered into a transaction in perfectly good faith and it may have resulted in advantage to him over some single creditor, yet the transaction would be fraudulent.

Hon. Mr. LEGER: What about its effect on a bank advancing money on a bill of lading?

Mr. ROGERS: That is precisely what I was coming to, sir. Banks do business in various ways with different customers. A bank frequently does business on bills receivable, with a promise by the customer to give security if the bank requires it. A situation may develop, due either to general business conditions or a change in the individual's situation, which from its experience indicates to the bank that it probably had better get security, and this it will ask for and obtain. Undoubtedly in cases of that sort there is some benefit to the bank as against other creditors or as against a single creditor. The onus now would be upon the bank to prove the transaction was a proper one. By reason of the phraseology of section 69 as now amended the onus is a very difficult one to satisfy, because it has to be shown that the transaction is for adequate and valuable consideration and without reason to suspect any insolvency. Yet by reason of the broad definition of bankruptcy it might well be—I realize this is stretching the point—that as bankruptcy would be constituted under the bill, failure to pay a particular debt, if the bank knew that it could hardly be said that it did not have some reason to suspect insolvency. You do not know how far the courts may go in that event. While it is an extreme illustration, there might be other cases where the bank could not come in and satisfy the onus, yet under the Bank Act there is a provision for banks taking additional security. For instance, a bank is not allowed to lend money on mortgage of land, but it is allowed to take such a mortgage as additional security; that is, if additional security is necessary to protect not only the bank but the depositors, because that is the important part of it, and that is why parliament has authorized those provisions. If a bank is going to be exposed to having it established that the taking of that security was a preference, it might invalidate the security and the bank might refrain from putting itself in that position. As a result the banks' security would be weakened and the credit standing of people doing business with banks would be affected. To offset this banks would have to take more security at the outset than perhaps is taken at the present time. The combined effect it seems to us is rather serious and could go a long way towards making ordinary business rather difficult.

If you look at subsection 2 of section 68 you will find it designed to enable the trustee to invoke provincial laws in order to invalidate certain transactions.

No one can have any quarrel with that, but the phraseology is so broad—it certainly was not so intended I believe—that the trustee could avail himself of any law in any province of Canada regardless of the locality of the debtor or of the property affected. There might be some extreme statute in British Columbia and the bankruptcy might have taken place in Quebec, yet as this subsection is worded the British Columbia law might be invoked in relation to the bankruptcy in Quebec, although the debtor did not reside in British Columbia nor had he any assets there. It seems to us this subsection should be redrafted to make it clear that that is not intended. As you gentlemen are aware, before the enactment of the Bankruptcy Act the provinces had certain legislation in the field of bankruptcy, such as the assignments and preferences acts. When the bankruptcy statute was enacted it was universally felt, and probably held, that the Bankruptcy Act would suspend the operation of the provincial laws. A question would now arise whether this amendment would remove that suspension. That is one of the difficulties which arises from the use of the more general phraseology such as appears here.

Before leaving subsection 1 of section 68, I may say that over all the years there have been many decisions on the effect of the provision that there should be intent established before a transaction is declared void for fraud. Those decisions will pretty well have to be abandoned under the proposed amendments, and that might be unfortunate in a number of different ways. But taking it from the point of view of bank transactions, it has been held that it would not be a preference for a bank to transfer a credit from one account of a customer to another account which was in debt. It is still a question whether under this broad phraseology that would be permitted. It would have to come before the courts again until it was declared authoritatively whether a bank could exercise its privilege of consolidating accounts, which it has always hitherto been allowed to do.

Then there are other cases where they might have difficulty. It has been held that payments in the ordinary course of business would not be regarded as constituting a preference. It might be a question whether payment on a debt which was matured and due the bank would be contrary to these provisions. In another case it has been held that payment of secured creditors should not be within the provision as it stands now in the Act. That question would have to be settled in the courts and until that had been done in an authoritative manner, the banks would not know how far to go in their ordinary day-to-day dealings with their customers. It seems to us that this amendment goes much further than may be necessary and will make it very difficult for people doing business.

In subsection 3 of section 68 there is reference to a secret transaction between the bankrupt and "any other person". It is difficult to know just what that might cover. As I have explained, there is an implied secrecy between banker and customer. Under this amendment that would be a secret transaction and might give rise to difficulties because it comes within that definition.

Subsection 5 of section 68 has already been referred to in a sense, but it does make it clear that evidence of intent on the part of either party to the transaction shall not be available as a defence to support such transaction if in fact a preference, benefit or advantage was obtained over the creditors or any of them. That is a pretty broad provision. A man would not be able to come into court and show good faith if in fact a preference, benefit or advantage was obtained. The transaction would be regarded as fraudulent and would be voided. In the Bankruptcy Act of 1910, as you gentlemen will remember, there was a provision of that sort, but in 1920 those words were transferred to subsection 2 and formed part of a *prima facie* presumption, which of course was susceptible of rebuttal. In other words, it might be a presumption of law from certain facts that the transaction was a benefit and improper, but evidence could be adduced to show that such was not the case. This new provision will

change that, and if any advantage or benefit or preference was obtained over any creditor the transaction will be invalidated. The effect of that would certainly be serious on ordinary business procedure.

I have a few more observations to offer with regard to section 69. As this section now stands in the Act, in order to enable a man to establish that he did not obtain a preference he must prove that the transaction was entered into in good faith before the date of the receiving order and without notice of any available act of bankruptcy. The new provision would add the following requirements: That the valuable consideration be adequate, that there be no knowledge of the insolvency or commission of an act of bankruptcy, that there be no reason to suspect insolvency or commission of an act of bankruptcy. This would really give rise to difficulties in a bank transaction. For instance, it would be very difficult in the case of a security given, particularly an additional security, where a bank felt positively that it was given for adequate and valuable consideration when it was really given for money already loaned and upon which some security had been taken, but that security perhaps had lost value in some way and the situation had developed to a point where the bank felt some additional security of real estate or something of that sort was necessary. The shifting of the onus here, which would require the bank or other person to bring itself within the protection of section 69 (1), is going to be much more difficult to comply with by reason of that and also because of the very broad definition of insolvency, "reason to suspect insolvency or commission of an act of bankruptcy." We have discussed that and have seen that the failure to pay one particular debt after repeated demands is an act of bankruptcy. As a result a bank, knowing the man's failure to pay the debt was for a perfectly good reason, might be regarded as having knowledge that he had committed an available act of bankruptcy, and therefore could not bring himself within the protection, and the transaction would be invalid. There are so many uncertainties arising from the proposed provisions that our feeling—which I think is common with that of other members of the commercial community—is that it would be better to adhere to the existing provisions and the body of law built up under them, over a period of twenty-five years, than cut loose from them altogether and throw the whole situation in the air so that no one would know just where he stood.

I should like now to make a rather broad jump to section 110 at page 72 of the Bill. It deals with proof of claims. Subsection 1 reads:—

Every creditor shall prove his debt as soon as may be after the filing of a proposal for a composition or after the bankruptcy—

Then there is this penalty added:—

—otherwise he shall not be entitled to share in any distribution that may be made.

It is quite proper to impose a penalty if a man does not prove his debt, but how soon is, "as soon as may be"? It seems to me there ought to be some precise method of ascertaining when a debt should be proved within some time limit. One court might hold a month was the time; another, that two years was not out of the way. Without some clear-cut definition it is very difficult to know where you are.

Hon. Mr. HAIG: What would you suggest, six months, one month?

Mr. ROGERS: I really would not make a sound suggestion because I think it could come better from the Superintendent of Bankruptcy himself, who has had wide experience in bankruptcy.

The CHAIRMAN: That is just a suggestion you are making?

Mr. ROGERS: Yes. He suggests "as soon as may be." But I think when he appreciates the difficulty of imposing a penalty for failing to prove a debt within a definite time, he will realize that it would be wise to set a time limit. There are other time limits in the Act, six months, three months and so forth, but I should think a fair time limit could be set. I really have not had enough practical experience of bankruptcy matters to make a sound suggestion. So I would rather leave it to those who have greater knowledge, and wider experience. I am sorry, but I am afraid that is as far as I can go.

Now, section 124. As the explanatory note indicates, this is new and purports to do away with the law of set-off, which is said to differ in important respects in the several provinces. It is difficult to know just what is meant by "mutual dealings." The banks have the right of set-off, that is, the right of setting-off one debt against another, or one debt against a credit, and that sort of thing. Whether this section is intended to prevent that being done we do not know, but we feel that it might be looked at with more care to see what the effect might be. It might go further than was intended. We should not think that the ordinary rights of setting one account off against another would be intended to be interfered with, but the language and the explanation would indicate that the law of set-off is not to be observed except in accordance with section 124.

There is a little point in section 125, subsection 7:—

The trustee shall not be liable for the costs of a creditor proving any claim if in the opinion of the court the trustee acted in good faith or was justified in requiring the claim to be proved before the court otherwise the costs of proving a claim shall be in the discretion of the court.

Our feeling is that if the trustee be given *carte blanche* he might go the length of contesting every claim and putting everybody to the proof, and the way the onus provisions have been changed it is going to be very difficult to sustain the validity of any transaction. The result would be the trustee would not be liable for any costs, and the effect might not be good. It seems to us that there ought to be something which would leave the trustee clearly in the hands of the court, and the court's discretion should govern the question of costs in all cases; otherwise the effect might be too sweeping. True, he is not going to be liable if the court feels he acted in good faith and was justified. We submit that the question of liability for costs should be left entirely in the discretion of the court, particularly if the onus is shifted as proposed in section 69 (2).

Section 126 deals with scheme of distribution. Subsection 1 provides:—

Subject to the rights of contractual secured creditors the proceeds realized from the property of a bankrupt shall be applied in priority of payments as follows:—

It is realized of course that there has been a great deal of difficulty in establishing priority of claims, and there ought to be some such section as this, but the difficulty is the use of the words "contractual secured creditors" ignores certain statutory situations. For instance, under the Bank Act a bank is given a statutory lien on the shares of its shareholders. That certainly is not contractual and would not be covered by this section. Then there is a banker's lien at common law on the property of a debtor which may be in the bank's hands, such as securities, which perhaps may not have been hypothecated, but the bank has certain rights there just as the solicitor has at common law. Neither of these is contractual. It seems to us that the word "contractual" should go out. To make it doubly clear probably there should be a clarification with regard to the proceeds realized by the trustee. Certainly it is not intended, we think, to cover proceeds realized by secured creditors, because naturally those proceeds go to meet their claims, although of course if there is any surplus that must be paid

over to the trustee to be held in trust by him. It seems to us that as worded there it leaves the matter open to doubt, that the section covers all proceeds realized whether by secured creditors or otherwise.

Hon. Mr. HAIG: Would you say therefore that a debtor who had left papers with his solicitor, on which the solicitor had done a certain amount of work and had at common law a lien on them, would come under that provision?

Mr. ROGERS: The subsection reads:—

Subject to the rights of contractual secured creditors the proceeds realized from the property of the bankrupt shall be applied in priority of payment.

You would not be a contractual secured creditor.

Hon. Mr. HAIG: I promise to look closely into that section.

Mr. ROGERS: I think it was not intended to go that far, but it has that effect.

Hon. Mr. HAIG: As far as I am concerned, I promise to see that it does not go that far. That is the only security we lawyers have.

Hon. Mr. MORAUD: In our province we have two sections in the code under which certain creditors are not contractual.

Hon. Mr. HAIG: We have woodsmen's liens and other liens of that nature in our province.

Mr. ROGERS: Yes, there are many common-law liens.

Hon. Mr. HAIG: In Manitoba we may have gone too far in giving liens to workmen under certain conditions. For instance, we have given liens on wood in the bush, and all that kind of thing.

Hon. Mr. LEGER: We have done the same in New Brunswick.

Mr. ROGERS: Their name is legion throughout the west particularly, and they would have to be considered.

I wish to thank you, gentlemen, for the privilege of making these representations. I have tried not to be carpingly critical, but rather to make constructive suggestions. We realize the difficulty faced by the draftsman and his great ability and wide range of knowledge with respect to the law of bankruptcy. We feel that after sifting the representations we have made and the suggestions you have received from other quarters it will be possible to develop a better Bankruptcy Act than the present one. Certainly no one would wish otherwise.

APPENDIX

BRIEF FILED BY MR. ROGERS, SECRETARY OF THE CANADIAN BANKERS' ASSOCIATION

The Honourable ELIE BEAUREGARD, Chairman,
and Members, of the Senate Standing Committee
on Banking and Commerce:

SENATE BILL A-5—AN ACT RESPECTING BANKRUPTCY

In the presentation of these observations concerning the above Bill, on behalf of the chartered banks of Canada, it is not intended to deal with the provisions of the Bill as they affect the public generally. Representations along particular lines have already been made to your Committee by various organizations so it is felt that we would be more helpful to the Committee and to the law officers of the Crown responsible for the drafting of the Bill if these comments and suggestions were confined as far as possible to the provisions of the Bill as they appear to affect the chartered banks in their ordinary course of business.

Interpretation

There are a number of provisions in the interpretation section of the Bill which, viewed in the light of their use in subsequent specific sections, give rise to objections which will be discussed in more detail under such sections. Brief reference only will therefore be given to certain paragraphs of the interpretation section.

Section 2 (b)—“adequate valuable consideration”

While the definition corresponds quite closely to that of the present 65(2), its operation under the proposed shifting of the onus of proof in the proposed section 69(2) might be serious, as will be explained later.

Section 2(o)—“creditor”

This definition goes beyond the present one to include a secured creditor although the latter term is separately defined in 2(ee). The inclusion of secured creditor in the definition of creditor would be confusing as will be apparent in the consideration of subsequent provisions.

Section 2(jj)—“transactions”

It is appreciated that this new definition has been inserted in order to remove certain detailed phraseology from the present section 64 which commences “Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered . . .” A comparison of these words with the new definition indicates that “transaction” defined as proposed goes much further than the present provision and covers not only positive acts but includes instances of inaction, and even omission. It is difficult to anticipate the effects of so broad a definition. It would seem advisable to have a tighter definition at the outset, more in keeping with the provisions of the present statute.

PART I

ACTS OF BANKRUPTCY

Section 3(d)—“other conveyance or transfer”

This includes any conveyance or transfer of property or charge thereon, which would have the effect of defrauding, delaying or defeating any creditor, and goes considerably further than (c), which would only include such transactions if they would be void under the Act as fraudulent preferences if a debtor

were adjudged bankrupt. The new provision would include the giving of any security to a bank under section 88 of The Bank Act or by way of additional security. The giving of such security could be treated as an act of bankruptcy if any creditor other than the bank asserted that it would delay or defeat him in his efforts to collect an alleged debt. It would be opening the door very wide if a man giving security to his bank in the usual course of business could be thrown into bankruptcy by a creditor although the transaction was an ordinary banking one which took place in complete good faith on both sides. Banks make advances to customers frequently and take only a promise to give security on goods to be purchased with the money and a promise to give additional security if required. The giving of either type of security for which provision is made in the Bank Act should not constitute an act of bankruptcy. Again, a bank, noticing changes in general market developments or in the customer's business, might deem it advisable to obtain more specific security as an added safeguard. The taking of additional security in such cases should not expose the customer to bankruptcy proceedings. The effect of so broad a change would tend to make it more difficult for certain types of businessmen to obtain credit.

Section 3(i)—"bulk sale"

This would be an act of bankruptcy differing altogether from the corresponding present one, which constituted the making of a bulk sale without complying with the relative provincial Bulk Sales Statute. The new provision would make any bulk sale under provincial legislation an act of bankruptcy if the sale price proved insufficient to pay all creditors in full, and in view of the broad definition of "creditor" already referred to this would include secured as well as unsecured creditors. The definition ignores the possibility that the bulk seller may have outside assets, including bank deposits, from which the balance of his creditors' claims could be paid, but the definition could result in a man being forced into bankruptcy regardless of his real financial position.

Section 3 (1)—"ceasing to meet liabilities"

The enlargement of this definition from "ceasing to meet liabilities generally as they become due" to the inclusion of failure to pay any particular debt after repeated demands for payment, would constitute a very serious encroachment on the right of an individual to contest claims of debt on sound legal grounds. It would expose him to threats of bankruptcy proceedings at the hands of an unscrupulous creditor unwilling to establish his claim to the debt in the civil courts. The banks would not like to have their customers subjected to unjustifiable bankruptcy proceedings for the collection of such a debt.

PART II

COMPOSITION, EXTENSION OR SCHEME OF ARRANGEMENT

Section 18(11)—"pending disposition of proposal, property of debtor under custody of court"

As this new subsection stands it would be too broad for it purports to nullify any alienation of a non-bankrupt person's property pending the disposition of his proposal. As worded it is wide enough to cover any disposition of property by a creditor such as a bank which has been given security thereon. While the exception of an alienation in the ordinary course of business might suffice it would probably be better to clarify the wording by stating "any alienation by the debtor", to carry out the true intention of the provision.

Section 19(1)—"approval binding on creditors but does not release debtor from liabilities mentioned in section 154"

In view of the definition of "creditor" to include secured creditors, in section 2(o), and the broad phraseology "shall be binding on all the creditors with

claims provable under this Act", this provision would be too broad in its effect. Restriction of the definition of "creditor" to exclude unsecured creditors would cure this difficulty.

PART III

GENERAL

Section 26(1)—"stay of proceedings"

Here again the definition of "creditor" in section 2(o) to include a secured creditor would make impossible for the latter without leave of the court to realize upon his security or avail himself of any remedy in respect of the property covered thereby. This would be contrary to all previous practice and would constitute a complete reversal of the settled law that property of the bankrupt covered by security given to a secured creditor need not be affected by the bankruptcy.

Section 26(2)—"secured creditors"

As the corresponding provision stands in the present Act, it is intended to authorize the secured creditor to realize upon his security "unless the court otherwise orders". The effect, however, of making this right subject to the provisions of the preceding subsection would completely change its effect and as already stated would make it necessary for the secured creditor to obtain leave of the court before availing himself of his legal remedies in respect of the security. It will be readily appreciated that such a requirement would impose a considerable expense upon a bank which was seeking a speedy realization of its security and the delays which would almost certainly ensue in obtaining leave might result in serious depreciation of perishable goods upon which security had been given and consequent loss to the bank. The provision would be completely unworkable and would constitute an unjustifiable fettering of the rights of secured creditors.

PART IV

ADMINISTRATION OF ASSETS

Section 39(11)—(13)—"Administrative officials, Superintendent may examine bank accounts . . . private records and documents, outside investigations"

These provisions do not expressly empower the superintendent to authorize accountants and others to act on his behalf in these examinations and investigations. The banks by reason of the banker-customer relationship are obliged to maintain secrecy concerning their customers' affairs and are liable for any unauthorized disclosure. It is necessary therefore that any legislative authorization to any government official to obtain information from the bank concerning a customer's affairs be clear cut and explicit and if any examination or investigation is to be conducted by anyone other than the superintendent he should be expressly empowered to authorize in writing such person to act on his behalf.

Section 68(1)—Avoidance of preference in certain cases.

The combined effect of this provision and of section 69(2), which thrusts the onus of proof on the person asserting the validity of the transaction, is that no transaction during three months prior to bankruptcy, within the meaning of the broad definition in section 2(jj), could stand unless the creditor could maintain the onus of proof thrust upon him by section 69(2). All creditors would have to proceed on the tenuous footing that every transaction was bad until proven to have been good.

The new test of voidability would be whether the transaction resulted in any person, creditor, etc., obtaining a preference, advantage or benefit over the

creditors or any one of them. It is proposed to discard the present basis where intent to prefer is the test, and all jurisprudence based thereon during the years since the statute was first enacted.

It will be recalled that in the Act of 1919, chapter 36, section 31(1), an alternative test of voidability was expressed in the words "or which has the effect of giving such creditor preference over the other creditors". In 1920, however, Parliament saw fit to transfer these words to the *prima facie* presumption provision in subsection 2 of the section. Such a presumption can be rebutted by evidence to the contrary.

In the proposed Bill the words "advantage or benefit" are added, making the test so broad that it would be difficult to imagine any transaction which would not result in one creditor obtaining some advantage or some benefit over the others or any one of them. As already stated in another connection, this could have serious results with respect to security validly given to a bank pursuant to the provisions of the Bank Act in consequence of a promise given by the creditor to the bank to give that security when required.

A decision under the present Act that the transfer by a bank of a credit from one account of a customer to an account in which there was a debit balance was not a conveyance, transfer or payment within the section might be held inapplicable under the proposed Act and might even be held to constitute a transaction which resulted in the bank obtaining a benefit over any one of the other creditors and be declared void. Such a decision might have a serious effect on ordinary banking procedure recognized by law under which a bank is entitled to consolidate its customer's accounts.

Under the present statute it has been held that payment of amounts due in the ordinary course of business would not be regarded as done with a view to prefer. The proposed revision would do away with that legislation and might be held to invalidate payments in the ordinary course by a customer to his bank of his obligations as they mature. It has also been held that a payment to a secured creditor was not within the provision but the new legislation might throw doubt upon the validity of such payments.

Section 68 (2)—Application of Provincial Enactments

It is probably not the intention that this provision would enable a trustee in bankruptcy, say in the Province of Quebec, to invoke any law of any other province in order to invalidate a transaction by a creditor in that province, yet the language is broad enough to permit the law of any other part of Canada to be invoked without regard to the locality of the debtor or of the property affected.

Some limitation should be added to the provision so the only provincial laws which could be invoked would be those of the province in which the bankruptcy took place, or in which assets of the bankrupt were situated at the time of the bankruptcy, or the province in which a transaction took place affecting property of the bankrupt.

A further question arises from this provision, namely whether it would have the effect of reviving certain provincial legislation relating to assignments and preferences which had been held valid prior to the enactment of bankruptcy legislation by Parliament but which since the passing of the Bankruptcy Act in 1919 has been deemed to be suspended.

Section 68 (3)—"secret transactions deemed unlawful"

It might be well to clarify the words "other person" in line 2 by the phrase "knowing him to be a bankrupt", in order to protect innocent transactions. In view also of the specific inclusion in section 68 (4) of the words "after the bankruptcy of any person", to have them inserted in line 1, subsection 3. Otherwise their omission from the one and inclusion in the other might give

rise to an interpretation that subsection 3 would cover any secret transaction prior to the bankruptcy. That might even be alleged to affect ordinary banking transactions between a bank and its customer as these are necessarily secret by implication of law.

Section 68 (5)—“admissibility of evidence of intent in disputed transactions”

This makes it clear that the effect of a transaction is to be the test regardless of intent. The proof of intent is still an essential factor under the criminal law. Should a man have the taint of fraud cast upon him if his intentions were honest? This proposed provision would constitute complete reversal of the present law and goes much further than seems necessary to resolve any confusion in existing decisions, a solution which might better be left to the mature consideration of the Supreme Court of Canada.

Section 69 (1)—“protected transactions”

It is submitted that this provision goes far beyond a simplified redraft of present section 65. The proviso to the present section 65 will protect certain transactions from avoidance if made (a) in good faith, (b) before the date of the receiving order or authorized assignment, and (c) without notice of any available act of bankruptcy. The proposed new provision would add the following requirements:—

(d) that the valuable consideration be adequate

(e) that there be no knowledge of the insolvency or commission of an act of bankruptcy

(f) that there be no reason to suspect insolvency or commission of an act of bankruptcy.

Moreover, the new provision may have left a gap between the filing of a petition of bankruptcy and the date of the receiving order or authorized assignment. Section 27 (4) of the Bill relates the bankruptcy back to the date of the filing of the petition. The new provision covers transactions before the bankruptcy and therefore could not save the validity of a transaction taking place between the filing of the petition and the date of the order.

Section 69(2)—“onus of proof”

The shifting of the onus in the manner proposed is so serious that it would be almost impossible to bring a transaction under the protection of the section. Every transaction would have to be carefully studied from the point of view of actual notice, available knowledge or reasons for suspicion, and unless a bank could be sure that it could positively establish that these were lacking and that good faith was therefore established, it could not afford to enter into the transaction.

In addition the question of adequacy of valuable consideration would arise, particularly with regard to security given either on goods or by way of additional or collateral security of any kind. It would be difficult to establish, for instance, that there was adequate consideration within the definition of section 2(b) for additional security given for a debt already incurred. In consequence a bank might refrain from taking additional security at a time when experience had indicated the desirability of such a course. It would follow that bank losses could be more serious than would otherwise be the case and the safety of the banking system would to some extent be jeopardized, all because the taking of additional security sanctioned by Parliament under the Bank Act for the purpose of protecting the depositors and the bank was made practically impossible by the provisions of bankruptcy legislation.

With all respect to the Superintendent of Bankruptcy, his knowledge and draftsmanship, it would seem that sections 68 and 69 should be replaced by the corresponding provisions of the present statute.

PART V

CREDITORS

Proof of Claims

Section 110(1)—“creditors shall prove claims”

The expression “as soon as may be” is rather indefinite, particularly as the new principle of the provision is that unless the creditor proves his debt “as soon as may be after the filing of the proposal . . . or after the bankruptcy he shall not be entitled to share in any distribution . . .” This is too drastic a penalty for a late filing, particularly when it is difficult to determine the last day for proof of debt. The expression “as soon as may be” is used in the present section 105(1) but it is not coupled with a penalty and the phrase does not seem to have received clear judicial definition.

Section 124—“mutual credits, debts or other dealings”

In the light of the expanded definition of “act of bankruptcy” in section 3 the last part of section 124 might interfere with a bank’s exercise of its right of set-off.

Section 125(7)—“Trustee not liable for costs”

It is submitted that the question of liability for costs should be left entirely in the discretion of the court, particularly if the onus is shifted as proposed in section 69(2).

Section 126(1)—“priority of claims”

The subsection commences

Subject to the rights of contractual secured creditors . . .

There need not be any reference to secured creditors, whether contractual or otherwise, because the section purports to deal only with the application of the proceeds realized from the property of a bankrupt, and has nothing to do with a creditor’s security.

In any event, the word “contractual” should be deleted because it would not include

- (a) any security the bank may have by way of banker’s lien at common law, and
- (b) a bank’s statutory lien upon the shares of its shareholders for unpaid debts or liabilities under section 76 of the Bank Act.

Neither of these is contractual. There does not appear to be any need to mention secured creditors. The trustee is not dealing with their property. Their freedom of action to realize should, as hitherto, be unhampered. If the wording were changed to read “the proceeds realized by the trustee from the property of a bankrupt” there would be less objection to saying “subject to the rights of secured creditors” if the purpose is to accept such rights clearly from the provisions of section 126.

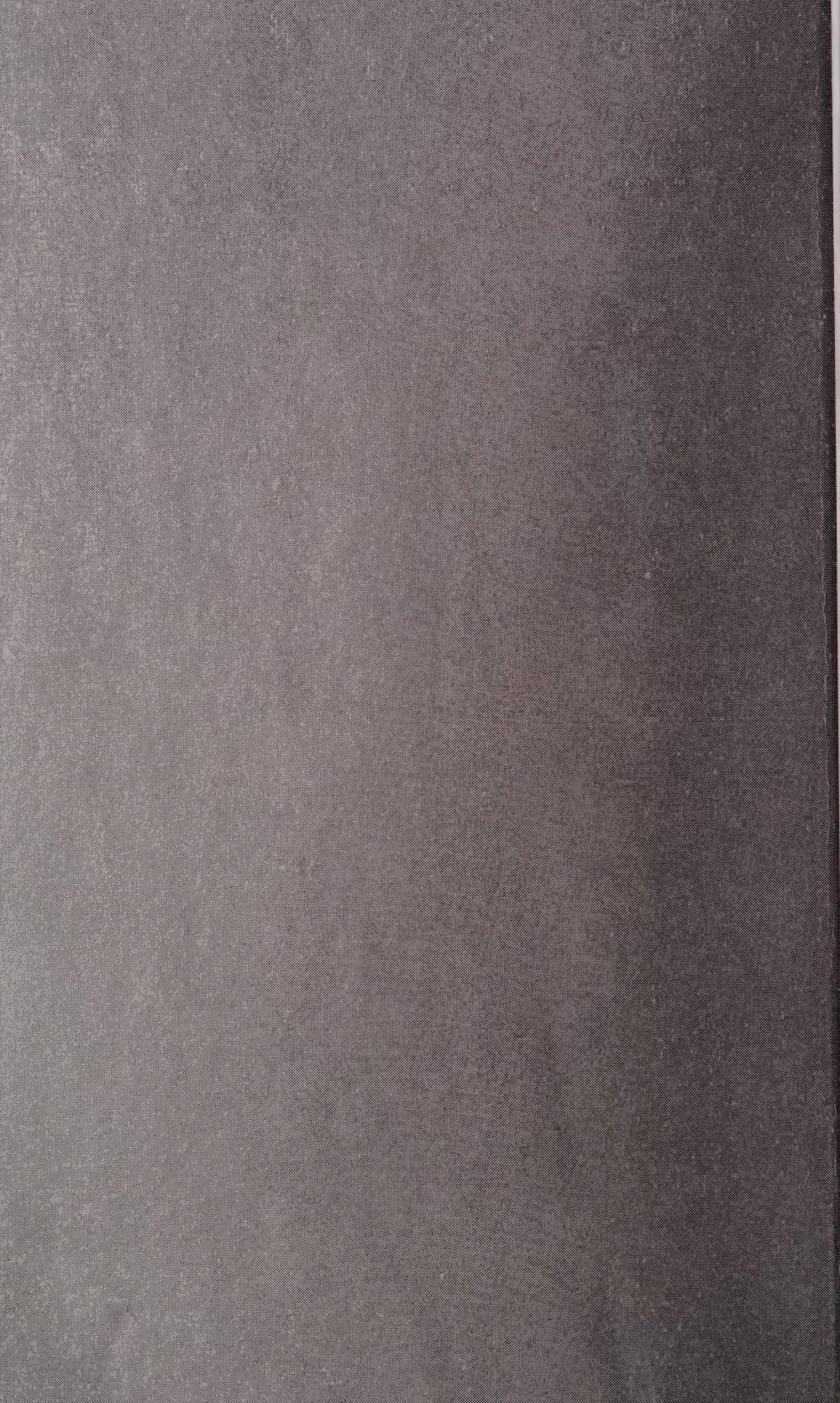
The foregoing suggestions are submitted, not in any spirit of adverse criticism, but with a keen appreciation of the difficulties encountered by the draftsmen of the Bill and in a genuine effort to present possible effects of the proposed Bill upon the banks, with some constructive proposals for overcoming the objections.

Respectfully submitted,

A. W. ROGERS,
of Counsel

for The Canadian Bankers’ Association.

MONTREAL, July 31, 1946.



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THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

Banking and Commerce

To whom was referred the subject matter of Bill 195, intituled:
"An Act respecting the Control of the Acquisition and
Disposition of Foreign Currency and the Control of
Transactions Involving Foreign Currency
or Non-Residents."

TUESDAY, AUGUST 20, 1946

WEDNESDAY, AUGUST 21, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

The Honourable D. C. Abbott, P.C., M.P., Acting Minister of Finance.

Mr. Graham F. Towers, C.M.G., Governor of the Bank of Canada.

OTTAWA

EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1946

ORDER OF REFERENCE

(*EXTRACT from the Minutes of the Proceedings of the Senate, 15 August, 1946.*)

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion for the second reading of the Bill (195), intituled: "An Act respecting the Control of the Acquisition and Disposition of Foreign Currency and the Control of Transactions involving Foreign Currency or Non-Residents."

After debate,

The Honourable Senator Howard, seconded by the Honourable Senator Vien moved, in amendment, that the said Bill be not now read the second time, but that the subject-matter thereof be referred to the Standing Committee on Banking and Commerce for consideration and report.

After debate, and—

The question being put on the motion in amendment.

It was resolved in the affirmative, and—

Ordered accordingly.

The question on the main motion for the second reading of the Bill was therefore postponed until the next sitting of the Senate.

L. C. MOYER,

Clerk of the Senate.

MEMBERS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine,	Euler,	Marcotte,
Aylesworth, Sir Allen,	Fallis,	McGuire,
Ballantyne,	Farris,	Michener,
Beaubien (Montarville),	Foster	Molloy,
Beauregard,	Gershaw,	Morand,
Buchanan,	Gouin,	Murdock,
Burchill,	Haig,	Nicol,
Campbell,	Hardy,	Paterson,
Copp,	Hayden,	Quinn,
Crerar,	Howard,	Raymond,
Daigle,	Hugessen,	Riley,
David,	Jones,	Robertson,
Dessureault,	Kinley,	Sinclair,
Donnelly,	Lambert,	White,
Duff,	Leger,	Wilson—(47).
DuTremblay,	Macdonald (Cardigan),	

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REPORT OF THE COMMITTEE

(EXTRACT from the Minutes of the Proceedings of the Senate, 22 August, 1946.)

THURSDAY, 22nd August, 1946.

The Standing Committee on Banking and Commerce beg leave to report as follows:

By order of reference made on Thursday, the 15th August, 1946, the subject matter of Bill 195 : "An Act respecting the Control of the Acquisition and Disposition of Foreign Currency and the Control of Transactions involving Foreign Currency or Non-Residents," was referred to your Committee for consideration and report.

In view of the importance of this matter, all Honourable Members of the Senate, whether members of your Committee or not, were invited to attend our sittings and to participate in our proceedings, to examine or cross-examine the witnesses, the right to vote being reserved to members of your Committee. This invitation was generally accepted and acted upon.

Your Committee have held six sittings and have heard the following witnesses:—

The Hon. D. C. Abbott, P.C., M.P., Acting Minister of Finance;
Mr. Graham F. Towers, C.M.G., Governor of the Bank of Canada and
Chairman of the Foreign Exchange Control Board.

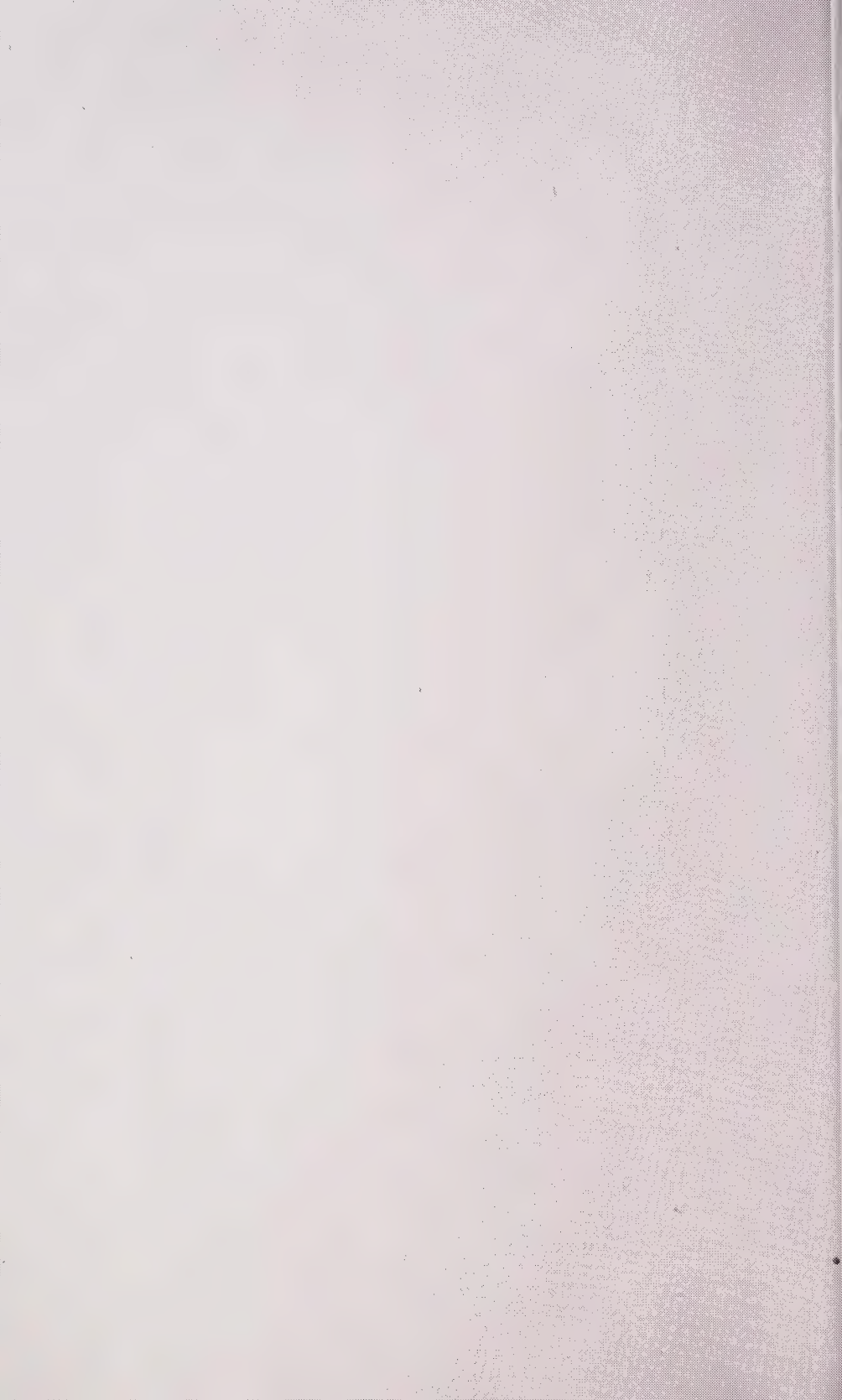
The hearing of these witnesses and the discussion which ensued have disclosed the necessity of amending the said Bill 195 in several important respects, and they have also revealed the necessity of continuing a modified form of foreign exchange control for a limited period of time.

Your Committee are therefore of the opinion that, with the information now available, the Senate proceed to the Second Reading of the said Bill 195, with the understanding that the Bill itself will then be referred to the Standing Committee to be amended in such respects as your Committee may deem advisable.

All which is respectfully submitted.

ELIE BEAUREGARD,
Chairman.

Ordered, That the same do lie on the Table.



MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, August 20, 1946.

The Standing Committee on Banking and Commerce, to whom was referred the subject-matter of Bill No. 195, an Act respecting the control of the acquisition and disposition of foreign currency and the control of transactions involving foreign currency or non-residents, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the Chair.

The CHAIRMAN: Gentlemen, we have with us this morning the Honourable Mr. D. C. Abbott, Acting Minister of Finance, and Mr. Graham F. Towers, C.M.G., Governor of the Bank of Canada. We will hear first from Mr. Towers.

Mr. TOWERS: Mr. Chairman, if I were asked to state in one sentence the objective of exchange control as it is operated in Canada, I would unhesitatingly answer that the objective is to avoid the imposition of restrictions on our foreign trade, and to enable us to participate with other countries through the medium of the International Monetary Fund and similar organizations in the efforts which are being made to promote growth and freedom of international trade on a multilateral basis. The reason why control of exports of capital serves these purposes requires some explanation and an examination of Canada's foreign exchange position, present and prospective. Obviously such an examination must include an appraisal of the position of the countries with which we conduct our business.

When the Minister of Finance made a statement in the House on the subject of foreign exchange control on June 17 last, he took occasion to emphasize the uncertainties of the international outlook and the difficulties with which Canada might be faced if the efforts to achieve international economic co-operation were not entirely successful. It is certainly necessary to bear in mind the fact that the war has caused terrific disruption and disorganization in many parts of the world, and has left many countries, amongst whom we may number some of our best customers, in a very bad international position from a financial and economic point of view. Perhaps there is a tendency at the present moment to forget these realities. Their effects on us are obscured by extension of international credit, especially by the United States, on a very large scale. The real tests are still to come. It is against the background of this difficult and dangerous international situation that our foreign exchange problems have to be considered.

I think that consideration can appropriately start with a reference to our foreign cash resources as at the end of last year. We possessed approximately \$1,500,000,000 (U.S.) of gold and U.S. dollar balances. This is an amount far larger than anything Canada has ever previously held. It is extremely fortunate for Canada that she emerged from the war period in such good shape from a foreign exchange point of view. Our good fortune in this respect was due in part to the operation of the Hyde Park Agreement, and to certain unusual occurrences such as the sale of approximately \$550 millions worth of wheat and coarse grains to the United States in the years 1943 to 1945. But even with these things on our side, we would have emerged from the war with no increase in our pre-war holdings of gold and U.S. dollars—approximately \$400 millions—if it had not been for capital transactions. The war-time increase in our foreign exchange resources was due to the factors referred to on page 21

of the Foreign Exchange Control Boards' Report to the Minister of Finance. We got U.S. dollar cash for \$236 millions of our holdings of U.S. securities. Over and above that, American investors bought a net amount of \$484 millions of Canadian securities. Subsidiaries of U.S. companies in Canada accumulated undistributed profits in the amount of \$232 millions. These, and certain other capital transactions during the period from September 16, 1939, to December 31, 1945, were entirely responsible for the war-time increase in our holdings of gold and U.S. dollars. We did not *earn* this increased amount. We got it through realization of capital assets or by a form of borrowing.

However we may have received these funds, it cannot be denied that possession of them gives us liberty of action—makes it possible for us to embark on the reconversion period with less control over foreign exchange transactions than any other major country except the United States. On the other hand, I do not think that these admittedly large holdings of gold and U.S. dollars should lull us into the belief that our position is an impregnable one.

Our high level of employment and national income, and the backlog of deferred consumers' buying, inevitably result in a tremendous demand for imports, most of which have to be paid for in U.S. dollars. On the other hand, a very substantial volume of our exports is financed on credit, and from these exports we earn no U.S. dollars. Predictions are dangerous things, and I would not care to make a definite estimate of our current account deficit in U.S. dollars over the course of the next two years. But I can go so far as to express the opinion that it would not be surprising if the deficit for the two year period was half a billion dollars or more.

During this same two years, Canadian securities payable in U.S. dollars will mature or will become callable in amounts aggregating more than \$500 millions. I do not suggest that all these securities would be brought home to Canada, but I do believe that substantial amounts will be repatriated. I am therefore inclined to think that, on balance, capital transactions will involve the use, rather than the receipt, of U.S. dollars during the next two years. It is quite impossible to make anything which purports to be an accurate estimate of the amount of U.S. dollars required for these capital transactions during the period I am discussing. One or two hundred million dollars would not, in my opinion, be a ridiculous figure to suggest.

It follows from what I have said that we may well see a reduction of more than \$600 millions in our U.S. holdings over the course of the next two years. It might even be the case that our holdings of gold and U.S. dollars were cut in half. Let me emphasize that I do not wish to name these figures as a definite prediction, but simply to say that the outlook at the present time is for drafts on our resources of the order of magnitude which I have mentioned. These figures assume continuance of control over exports of capital. If we do not control exports of capital, a host of new uncertainties appears on the scene.

Canada is a debtor country. Canada's foreign debt is substantially larger than that of any other country in the world if one excepts the war debts incurred by the United Kingdom in the form of accumulated sterling balances. A very large portion of Canada's foreign debt is in the form of negotiable securities in the hands of non-residents. These holdings in the United States run to billions of dollars.

Let us suppose there is no control over the export of capital. During the next few years, our holdings of gold and U.S. dollars might well be going down on a very substantial scale, for the reasons which I have mentioned. In addition, with no control there would be a further drain arising from Canadian purchases of U.S. securities. I do not suggest any flight of capital from this country, but I believe that the amount involved in the purchase of New York stocks could be quite substantial.

Under these conditions—and assuming no control over capital exports—would foreign holders of our securities decide to sell them in Canada and take their

money home? These foreign holders would be aware that our exchange reserves were going down very substantially. Would that cause them any concern? If it caused them the slightest concern, a number of them would in fact take their money out, because any suggestion of risk in respect of exchange depreciation or reimposition of foreign exchange control would more than counterbalance the extra interest which they could earn on first-class Canadian bonds as compared with U.S. investments. Is there any chance that the international financial and business situation may at times be of a character which does not make for optimism? Any worry of that kind can produce a movement of capital.

I think I should point out that there is a new element in the situation as compared with pre-war days. Since September, 1939, the government has followed the policy of stabilizing the exchange rate, and under the Bretton Woods Agreement the government committed itself to the maintenance of a stable exchange rate unless and until a change in rate became necessary as the result of a fundamental disequilibrium. A reduction in our foreign exchange resources as a result of export of capital would not necessarily or even probably be regarded as proof of a fundamental disequilibrium. Prior to September, 1939, there was no commitment to avoid day to day fluctuations in exchange. There were times when that commitment was implied because of the fact that we were legally on the gold standard, but, as we all know, the first cold breeze blew us off the gold standard. During all the years between the two wars, the exchange rate was settled by demand and supply without government intervention in the market. In times of stress, when worry about our situation caused some withdrawals of capital, the brake on those withdrawals was provided by the exchange rate. A foreign investor may be sufficiently frightened to take out his money at par, but not so panicky as to accept the loss involved in taking his money home at a 20 per cent discount. Imports also were to some extent rationed by the rate. I do not think it is Parliament's desire that we should go back to a system in which movements of hot money and exchange speculation could affect and interfere with everyone engaged in foreign transactions. But I fail to see how, in the existing state of world affairs, a commitment can be taken to maintain exchange rate stability with the sword of uncontrolled capital movements hanging over our head.

The position of the United States is very different from that of Canada. They are on balance a creditor country, not a debtor country. The United States holdings of gold are tremendously large, something over \$20 billions at the present time; and even in the unlikely event that non-residents who own U.S. dollar balances or marketable securities should desire to withdraw their money from the United States, the United States is in possession of sufficient gold to repay these claims and still have a large supply of gold on hand.

From a foreign exchange point of view, I think Canada has been exceptionally lucky in respect of the position in which we find ourselves after the close of the war. If we had ended the war with the same amount of gold and U.S. dollars with which we commenced it, that alone might have been considered a fortunate outcome. We would have had \$400 millions. In that case, I believe that it might well have become necessary to embark on quantitative regulation of imports next year. And there, let me say, is a form of control which is extraordinarily bad from a business point of view. Fortunately, we are not in that position. Our people can import all the supplies they want, and can get, from any country. We are in a position to stand some substantial exchange losses, and see how things go during the transition period. I think, however, that it would be reckless to overestimate the strength of our position, and to run serious risks of getting into a fix which might necessitate the adoption and enforcement of new, more extensive and more rigorous measures of control.

Hon. Mr. ABBOTT: Perhaps I should say a word on the second question on the list which Senator Robertson has submitted.

As honourable senators are aware a very substantial number of considerations were dealt with under the War Measures Act by order in council during the war. The Emergency Transitional Powers Act, as it now stands, contains the various orders in force until fifteen days after the commencement of the next session of parliament, with the probability that it will be extended to sixty days, in the hope that before the expiry of that delay period a good many of the orders now in force will have become unnecessary. As many of the orders as possible are being put in legislative form because it is inevitable that the powers given under them will be required beyond the period which expires sixty days after the commencement of the next session.

The government is convinced that some form of foreign exchange control will most certainly be necessary beyond the period which I mentioned. It is quite evident that parliament will have a very heavy task before it during the early days of the next session because of such measure as will then be found necessary to be continued. We have therefore been trying, as far as possible, to get into the form of legislation at this session the measures now carried out under order in council and which it is certain will be required for some time after the commencement of the new session at the beginning of next year.

This bill was first introduced, as the committee knows on June 17. The Minister of Finance indicated in a speech in Toronto as far back, I think as March 1 that the government had come to the conclusion that a continuation of Foreign Exchange Control would be necessary. The question was before the Banking and Commerce Committee of the House of Commons for some time; it is unfortunate that it was not sent over to the Senate earlier, but I can assure honourable members that the fault was neither mine nor the House of Commons. It simply was not possible to get the measure through the Banking and Commerce Committee and then to the house at an earlier date. The government feels that it would not be desirable to hold a measure of this kind over to be dealt with in the first sixty days of the next session. It is quite evident that some measure of this kind would have to be provided. That is the reason we felt it was desirable to introduce this measure and some others which during the war have been carried out under orders in council passed under the War Measures Act.

Hon. Mr. CRERAR: Mr. Chairman, may I ask a question?

The CHAIRMAN: I think it would be much better if we disposed of the entire statement as contained in the paper which Mr. Abbott has before him.

Hon. Mr. CRERAR: What is the statement?

The CHAIRMAN: A programme has been devised by the leaders of both houses so that the witnesses will make statements on the specific points and then questions may be asked by all senators. The first point has been dealt with by Mr. Towers. Mr. Abbott has been dealing with the second point. I think Mr. Towers should proceed.

Mr. TOWERS: Assuming there is a need for some kind of foreign exchange control, and that the bill be dealt with at this session of parliament, is there an alternative method of meeting our foreign exchange problems which would interfere less with the liberty of the individual, such as an exchange equalization fund? In the operation of the exchange equalization fund the government in the present circumstances, in view of our participation in Bretton Woods, would have taken the responsibility of preserving stability in exchange rates, and would have to operate the equalization account with that fact in mind. In other words, if the circumstances of our international situation were such that our current earnings of U.S. dollars from exports and other sources were not sufficient to supply the demand for U.S. dollars for imports and other needs, the government would have to stand ready to sell U.S. dollars out of resources which it now possesses. As I indicated in

my remarks earlier, I believe that over the next couple of years the excess of the demands for U.S. dollars over the supply of them will in fact be very substantial.

Hon. Mr. HAYDEN: Do you mean the current supply?

Mr. TOWERS: I should say the demand for the current supply would be very substantial. In the operation of the equalization account the government of course would have to be prepared to use up the existing resources to cover that excess demand. If the demand is limited to current account needs and certain needs for repayment of maturity or other fixed obligations, we have sufficient to meet those needs. The equalization fund operation assumes no control over exports of capital or the means that the government would have to supply U.S. dollars and stabilize the rates to anyone wanting U.S. dollars for any purpose whatever. It would be required to supply U.S. dollars to non-residents who decided to sell securities in Canada; it could not question the purpose for which the U.S. dollars were required, or whether they were demanded by residents or non-residents.

Hon. Mr. ROEBUCK: Why?

Mr. TOWERS: Because that is inherent in the operation of an equalization fund, in the sense in which it is mentioned here—that there should be no foreign exchange control. That is my understanding of the question.

Hon. Mr. HAIG: That is correct.

Mr. TOWERS: For the reason which I mentioned earlier I would have my doubts as to whether our exchange resources would be equal to that uncontrolled demand. It must be considered that if the depletion of our foreign exchange resources reached the point where we would have to turn to the International Monetary Fund for assistance, those who operate it would say to us, "Why is it that your foreign exchange holdings are getting so dangerously low, and why do you come to us?" They would further say, "We do not wish to cover your current trade requirements; the fund is to cover the export of capital." In the fund agreement it was specifically provided that if a country had to resort to the fund because of the outward movement of capital on any scale the fund would have the right to suggest that that country should impose control of the outward movement of capital. The implication is that the fund should not be used for that purpose; its resources, particularly in hard currencies are not unlimited, and it desires to preserve its resources to promote the freedom of current international trade and not to provide money for people to withdraw their capital from various countries.

Hon. Mr. EULER: If the trend was towards the depletion of that billion and a half dollars in American funds would you not have time, by way of emergency legislation, to institute a control?

Mr. TOWERS: I do not believe so. It is one thing to have foreign exchange control in a country which never had it before, which was our position in September, 1939. While it might have been expected that we would have to impose it, apparently it was not done; any flight of capital which took place was limited to only a comparatively few days before the foreign exchange control came in. But once a country has had foreign exchange control, then at any time that things are going badly it swings the foreign exchange control question in the people's minds. I believe that once the difficulty started, and before it could be stopped in the way which you suggest, we might get into a low position. I have emphasized the value of our present strong position in enabling us to take real chances, to suffer serious losses in foreign exchange without imposing quantitative control of imports. Moreover, I think it is the case that in the years between the two world wars we usually had gold and U.S. dollar resources which were inadequate for Canada. I think that the 400 million dollars with which we entered the war could have been criticized as a dangerously low

position. We did get by, but it was due to circumstances which we had no right to anticipate before the war. Having in mind the higher price level today, as compared with pre-war values we must expect that even with the same volume of deficits in our trade with the U.S. dollars, that the size of the deficit will be larger; in other words, 400 million dollars before the war would be represented by 600 million now.

Hon. Mr. EULER: But we have a billion and a half.

Mr. TOWERS: We have a billion and a half but I would not be surprised if that amount were cut nearly in half within two years.

Hon. Mr. McGEER: We would still have a huge surplus.

The CHAIRMAN: May I ask honourable senators to refrain from asking questions until Mr. Towers has made his statement.

Mr. TOWERS: To sum up on the exchange equalization account, the question there really is: Is control of export capital really necessary? The exchange equalization account assumes no special control; that is to say, it assumes stabilization of rates, but no control of capital movements.

Hon. Mr. LAMBERT: In that connection I think it is important to mention the point about being able to scrutinize details of transactions.

The CHAIRMAN: Senator Lambert, your question may be important, but there are a great many important questions to be discussed.

Hon. Mr. CROKER: I suggest, Mr. Chairman, that Mr. Towers and Mr. Abbott be allowed to complete what they have to say before submitting to questions.

Mr. TOWERS: The minister has pointed out, and perhaps it should be said, that the exchange equalization account does not assume any scrutiny of transactions.

The CHAIRMAN: We will proceed now with No. 4.

Hon. Mr. ABBOTT: No. 4 of these headings, Mr. Chairman, is the desirability of putting a time limit on the life of the act. As honourable senators are aware, that question was considered and discussed in the Commons and its Banking and Commerce Committee. I indicated both in the House, I think, and in the committee that we would be prepared to consider a time limit, although the government felt that in accordance with the usual practice under the British parliamentary system no term should be fixed for the operation of the measure, that it should be left to parliament to repeal it when it became no longer necessary. The only suggestion made in the Commons' Banking and Commerce Committee as to a time limit was a limit of one year. The government felt that that was entirely inadequate, that if foreign exchange were required at all it was quite obvious that it would be required for longer than one year. I will ask Mr. Towers in a moment to give, if he will, the technical justification for that statement. Therefore I could not accept the suggestion that the duration of the bill be limited to a year. I would have been prepared to consider a clause fixing the duration for a longer term, although I must say frankly to the committee that on the information I have I think it is undesirable. If a term were put in I think it should be on such a basis that there would be no risk of the act lapsing while parliament was not in session. If consideration were given to inserting a term in the bill, I think it should be to expire on a certain date, let us say, provided parliament were in session, or, if it were not, then sixty days or some other term after the commencement of the next session.

Hon. Mr. HAIG: As in the Emergency Transitional Powers Act.

Hon. Mr. ABBOTT: Yes. That act of course continues orders in council in force until sixty days after the commencement of the next session. I hope

honourable senators appreciate the difference between the powers in that act and what is asked for in this bill. That act confers upon the government wide powers to legislate by orders in council on a variety of subjects. Anything enacted by virtue of that act will lapse sixty days after the beginning of the next session. This bill contemplates a certain principle, namely, the principle of exchange control, and it provides the machinery for carrying the principle into effect. It has a certain purpose, and in that respect it differs materially from the National Emergency Transitional Powers Act. For reasons which I think will be clear to the committee the government cannot accept a limit of one year to the life of the bill, and although we think it is not desirable to have any period of limitation inserted we are prepared to consider a longer one. I think if it is decided to limit the life of the measure it should be on conditions such as I have indicated, namely, so that there will be no chance of the bill lapsing when parliament is not in session. We have an example of an act lapsing at a very inconvenient time in the United States, the O.P.A. That is a practice which is followed in countries like the United States, where the executive is not responsible to the legislative body, but it is not a practice which I think is generally to be commended in countries which follow the British parliamentary system.

That is perhaps all I should say at the moment on the question of a time limit in the bill. I would like Mr. Towers to add a word, if he will, on the technical question.

MR. TOWERS: Mr. Chairman, it is of course impossible for anyone to predict when Canada could remove control on exports of capital without running unjustifiable risks, because to make such a prediction one would need knowledge of our own situation and of the political and economic situation of the world generally at some date years removed from now, and in fact no one has that knowledge. There are two possible courses of action. One is the normal course of not placing an expiry date in the act and relying on repeal of the measure when it is no longer necessary. The other is the one which has just been mentioned; that is, to name an expiry date, which has not necessarily any relation to the time when repeal will be practical, but which will constitute, shall I say, a form of diary note to ensure that the government and parliament will not forget to give the matter consideration.

I think it must be said that the second course involves certain risks. If it turns out that as we near the expiry date our foreign exchange position and the international situation leave much to be desired, worry may develop as to whether or not foreign exchange control powers will be renewed. It might be assumed that in such unfavourable circumstances as I have suggested the powers would in fact be renewed, but business men and the public generally often hesitate to base their actions on assumptions of that kind. There might be a fear that if control was not renewed, exchange rates would be materially affected, and in a free enterprise system uncertainties of that kind necessarily cause hesitation and lack of confidence, neither of which promotes employment and new development.

Mr. Chairman, it is hardly necessary for me to say that a decision as to whether or not an expiry date should be placed in the act is a matter of high policy which only parliament can decide. All that it is proper for me to suggest is that if an expiry date is set, it should be set with due regard for some of the risks which I think it is fair to say are involved.

THE CHAIRMAN: Gentlemen, if it is agreeable we can now proceed with questions.

HON. MR. HAIG: Mr. Minister, what would you think of a suggestion to limit the life of the bill to two years from next January, if parliament were then in session, and, if not, to the end of the then approaching session, which

would be the end of the session of 1949? That date is farther ahead than any that has been mentioned by most people with whom I have discussed this matter. Some have suggested one year and some, two. I do not think much of the proposal that the expiry date be sixty days after the opening of a session, and that is why I ask what your opinion is as to fixing the date as at the end of the session of 1949.

Hon. Mr. ABBOTT: That is a good suggestion; that allows the whole session for consideration of the matter.

Hon. Mr. HAIG: That would give you to the end of the session of 1949. I want to be quite candid—I am speaking only for myself, but I think this is the view of our party—we want to give the government every assistance we can. At the same time, we do not want this measure to be permanent. If within two or two and a half years from now we see that it is absolutely necessary to continue the control, we will be the first to stand behind you. We would like the onus to be on the government and the Foreign Exchange Control Board to satisfy parliament that the power should be renewed.

Hon. Mr. ABBOTT: Is your suggestion, Senator Haig, that a duration should be stated along this line—that the act, unless renewed, should lapse on the last day of the session first called in the year commencing January 1, 1949?

Hon. Mr. HAIG: Correct.

Hon. Mr. ABBOTT: Well, subject to consultation with my colleagues, I do not think I would take objection to such a provision. I think it might be put in general terms.

Hon. Mr. HAIG: We will not dispute about the terms. You can consult your counsel and we will consult ours.

Hon. Mr. ABBOTT: Your suggestion would be the last day of the session which first commences in the year 1949?

Hon. Mr. HAYDEN: How about 1948?

Hon. Mr. CRERAR: I am not prepared at the moment to accept Senator Haig's suggestion.

Hon. Mr. HAIG: I am not speaking for anybody but myself.

Hon. Mr. CRERAR: I think it is a matter of regret—I am not criticizing the government in this respect—that this measure, one of the most important that parliament has dealt with, comes to us when we are supposed to be within a week of the termination of the Senate. I do not like that; it seems to me that that is not the right way to handle a bill so important as this one. I do not think it will be denied by Mr. Towers or by Mr. Abbott that this bill seeks to confer very extraordinary powers on the Foreign Exchange Control Board.

Hon. Mr. HAYDEN: Would not the word "continuing" be better?

Hon. Mr. CRERAR: The bill proposes very extraordinary powers; it provides no limitation either in time or scope of operation. Such a measure should not be passed by parliament without most careful scrutiny; and we in the Senate have not had an opportunity to so consider it. I was impressed with what Mr. Towers said about the need of controlling the large movement of capital. By his remarks I presume that he does not mean that Canadians will lose confidence in their country or their government, and want to get their own wealth out of the country in some form or other, but that it has to do with investments in Canada particularly by people from the United States who may have bought dominion government securities or provincial or municipal securities.

For the sake of argument, assuming that it is necessary to have some sort of control over large movements of capital, I still fail to see why it is necessary to incorporate in this bill absolute controls over individuals in this country. For instance, if a farmer in Saskatchewan is using a tractor manufactured in

Minneapolis and in the midst of his harvesting operations it breaks down, under this measure the first thing he has to do is to get a permit to import the repairs.

Mr. TOWERS: Any imports of any kind can be purchased by any one in Canada in any amount and the foreign exchange board cannot say nay. The purchaser is asked when the import comes in to put certain foreign exchange control information on the declaration so that when he wishes to make payment for the parts he will have evidence to show the bank that he in fact has an obligation to pay for an import. The word "permit" is of course a most unfortunate one. Other names could have been used which would have been so much better, because the permit in fact is merely a voucher to enable the purchaser to demand and receive U.S. dollars from the bank.

Hon. Mr. CRERAR: Take for instance, Mr. Towers, if a resident of Canada wants to send \$150 to his mother in Minneapolis. Do I understand he would have to secure a permit to send that amount for benevolent purposes?

Mr. TOWERS: He would have to go under any circumstances to the bank to get the U.S. dollars.

Hon. Mr. CRERAR: But supposing he was a hundred miles from the bank?

Mr. TOWERS: What would he do without foreign exchange control?

Hon. Mr. CRERAR: He would go to the post office and buy a money order.

Mr. TOWERS: He can do that under existing conditions. The only difference under the exchange control measure is that he would be asked the purpose of the remittance. If he said it was for the purpose you mentioned he would get the money.

Hon. Mr. CRERAR: The point I am raising is that he would be required to get a permit; he has to get authority from someone to send the money out of the country.

Mr. TOWERS: The authority asks the object of the remittance.

Hon. Mr. CRERAR: He would be required to get some sort of document from the postmaster, or someone else, to show that he has conformed with the law in sending the money out of the country.

Mr. TOWERS: When he pays the exchange he says, and necessarily signs, indicating that the purpose is so and so. That is all.

Hon. Mr. CRERAR: It would be quite within the powers of the Foreign Exchange Control Board to refuse that transaction under certain difficulties.

Mr. TOWERS: That question touches on a number of points. You have given one illustration which is theoretically correct; in other words, there are many ways in which the Foreign Exchange Control Board could make fools of themselves and be a nuisance to the public. But if they did that I predict that they would not be the Foreign Exchange Control Board longer than twenty-four hours. That of course is the safeguard.

Hon. Mr. CRERAR: I would not quite agree with your statement, Mr. Towers; that is not the way these things operate. If the board did do what you suggested they might there would be a tremendous volume of annoyance throughout the country; but we have had a state of annoyance throughout the war, and because of the overriding purpose of the war the annoyance has passed over; but you cannot do those things in peacetime.

Hon. Mr. EULER: Would the postmaster be the judge of the propriety of sending that money across the border?

Mr. TOWERS: Certain principles are laid down. For instance during the period of war, when our resources were particularly low, limitations were placed upon what we might call benevolent remittances; but those remittances were never so low as to involve starvation on the part of the recipient. They were

required to keep their remittances down to the moderate proposals which individual might need; they were not on a scale which would provide for a luxurious living.

Hon. Mr. EULER: That does not answer my question.

Mr. TOWERS: The principles are laid down.

Hon. Mr. EULER: The postmaster would have the right to refuse money on his own initiative and at his own discretion?

Mr. TOWERS: If it was stated to be a benevolent remittance of that kind would not. I am unable to cite the figures, but if someone came in and asked for \$50,000 he would refuse it subject to examination by the board.

Hon. Mr. EULER: That is the limit which he would refuse.

Mr. TOWERS: I am citing a very high level, because I cannot remember the exact figure.

Hon. Mr. EULER: But not many would come in asking for \$50,000?

Mr. TOWERS: No.

Hon. Mr. EULER: Supposing I came along and asked for \$500 for a certain purpose, would the postmaster refuse me?

Hon. Mr. HAYDEN: He might and he might not.

Mr. TOWERS: In the post office the limit is \$100; above that it is referred to the board.

Hon. Mr. EULER: Which would mean delay.

Mr. TOWERS: Or it would be referred to the bank.

Hon. Mr. EULER: What is the limit on banks.

Mr. TOWERS: For benevolent remittances, \$100.

Hon. Mr. HAYDEN: As I understand it there is no question of delay because there is direct telephone communications between the banks and the board. An answer could be secured the same day.

Mr. TOWERS: That is correct.

An Hon. SENATOR: But the bank could refuse it?

Mr. TOWERS: The bank would refer it to the board if it was over \$100.

Hon. Mr. CAMPBELL: And the board could refuse it.

Mr. TOWERS: The board could refuse it if the amount involved seemed out of proportion.

Hon. Mr. CRERAR: Mr. Towers, while the amount is \$100 now, the board could issue new instructions to the banks that the limit be \$50. It has power to do so?

Mr. TOWERS: That is true.

Hon. Mr. CRERAR: And it has the power to prohibit payment altogether if it desires to do so.

Mr. TOWERS: That is true of course but the board has never taken any action of that kind without governmental approval.

Hon. Mr. CRERAR: That may be true, but my criticism of this bill is because of the power it places in the hands of the board. It is given extraordinary authority over transactions of the ordinary individual, in order to prevent someone taking five, ten or fifteen million dollars out of the country. Surely there is some way of bridging that gap.

Mr. TOWERS: I wish I knew what it was, Senator Crerar. I am sure I feel as strongly as you, because the administration involves responsibility and work. If it were possible to cull out all the multitude of smaller transactions and still achieve our objective it would be acceptable but I do not think it can be done.

Hon. Mr. HAYDEN: How can you control without some person having the right to say no?

Mr. TOWERS: That is a question we cannot answer; we do not know.

Hon. Mr. CAMPBELL: How serious is the problem of individuals requiring foreign exchange for the purpose of travelling, sending benevolent remittances or maintaining themselves in the United States in the case of illness? How serious is that problem in connection with your whole plan?

Mr. TOWERS: While the amounts involved are substantial I believe we can afford them; in fact we are affording them at the present time. It may be that the limit which has been mentioned so far as benevolent remittances are concerned can be raised, because certainly the objective is to develop a situation where a number of references to the board will be cut down to the absolute minimum; and of course they have been tremendously cut down during the last year. The number of people who find that their applications are not immediately dealt with by the bank or post office is very small; we may be able to make them even smaller.

Hon. Mr. EULER: When an individual does go to the board over the refusal of the postmaster, does someone on the board give the decision or does it go before the whole board?

Mr. TOWERS: The board tries to lay down certain principles so that it can manageably deal with the particular cases.

Hon. Mr. EULER: The board does not pass every case.

Mr. TOWERS: It cannot pass on the individual cases, but tries to lay down certain principles.

Hon. Mr. EULER: And some official makes the decision.

Mr. TOWERS: In the light of the principle; but if that decision causes objection the case would certainly be referred to the board. I can think of only one refusal in connection with travel. The government states its policy regarding travel and indicates the funds which will be provided for all reasonable travel needs; the board then has to appraise that very liberally to make sure that they are not being too officious. We have refused only one application which asked for \$100,000 to spend the winter in the United States. We thought that was high.

Hon. Mr. LAMBERT: Mr. Chairman, before we proceed further may I say that there are two aspects to our problem; one relates to the field in which Mr. Towers is an expert, the other having regard to questions of policy which involve the minister. In order to serve the witness' convenience as well as the interest of the senators, I think there should be some regard for the two phases of the organization, and that each senator be allowed to ask his questions before going on to another.

Hon. Mr. CRERAR: There are a few more questions I would like to ask Mr. Towers, what would be the effect of this control on the investment of American capital in business enterprises in Canada? I will cite an instance. About fifteen years ago an American concern invested about \$35,000,000 in the development of the Hudson Bay Mining and Smelting Company's property at Flin Flon. As a result a great deal of employment was given to Canadian labour—an industry has been developed which is now employing more than 1000 people steadily—and of course it has meant the purchase of a vast amount of Canadian materials. Obviously the capital requires a return, and the company has been paying a dividend of \$2 a share, practically all of which goes to the United States, so I am told. Under this measure the board could refuse to let the return on the capital go out of the country. I know of two other large possible developments in Canada; one of them would probably

require as much capital as was put into the Hudson Bay Mining and Smelting Company, and the investment in the other would run into several millions. If this measure goes through might it not have an adverse effect on the willingness of Americans to put their capital into permanent enterprises in Canada, because of the uncertainty of getting out a return on their money?

Mr. TOWERS: No, I do not think that will be the case. Certainly our experience during the war would not indicate any apprehension, and money is coming in for capital development right now. I think that those who are considering developments of that kind pay attention first of all to the merits of the particular thing and whether it will be profitable; and that they have regard also for the degree of political and economic stability of the country in which they are putting their money, and its past performance in respect of allowing funds to be remitted home. I believe that the policy pursued by Canada in that respect during the war, even during the stages which were most difficult from a foreign exchange point of view, proved to be extraordinarily reassuring to investors in other countries, particularly the United States, with the result that far from there being any indication of fear of our exchange control between September 1939 and today, the embarrassing thing, if any, has been the degree of their confidence in Canada and their desire to purchase our securities.

Hon. Mr. CRERAR: You do not think legislation of this kind would adversely affect that opinion in the United States?

Mr. TOWERS: I do not.

Hon. Mr. CRERAR: I do not agree that the experience during the war is necessarily a criterion of what would happen in peacetime. I am afraid the bill would have a very definite bad effect once it became known.

Mr. TOWERS: Of course, various developments are now taking place, and on a very substantial scale, in the expectation that control is to be continued.

Hon. Mr. CRERAR: I wonder if that assumption is correct. What reason would an American investor have for thinking that we were planning to control foreign exchange permanently?

Mr. TOWERS: Not necessarily permanently, but for an uncertain period of time. One reason for his thinking so would be statements by ministers and discussions in another place.

Hon. Mr. CRERAR: Which of course the American investor would know nothing at all about.

Mr. TOWERS: Those individuals that I speak of, Senator, know very well.

Hon. Mr. CRERAR: I doubt that. I should think that when they come to make investments they would inquire of Senator Hayden or Senator Campbell or some other solicitor in Canada, "What are your laws in regard to this?"

Mr. TOWERS: I am thinking of recent cases where I myself had discussions with the people concerned.

Hon. Mr. CRERAR: And you were able to persuade them?

Mr. TOWERS: No. They of course have as yet no right to expect that this measure will be passed, but their attitude is that whether or not it is passed they will go ahead.

Hon. Mr. CRERAR: My complaint against the bill is that it gives very sweeping and complete powers to the Foreign Exchange Control Board, and that it does not appear to be necessary to have all those powers in order to guard against what you emphasized in your opening remarks, the movement back to the United States of American capital that had come to Canada. Suppose an American has invested, say, \$5,000,000 in Canadian Government bonds. In a year or two years from now if he desired to sell those bonds, you could deprive him of the right to do so?

Mr. TOWERS: To sell them in Canada?

Hon. Mr. CRERAR: To sell them anywhere.

Mr. TOWERS: Oh no, he could sell them in the United States or anywhere else if he wanted to. And between September 16, 1939, and January 1946 there were certain purchases registered with the board, and although no formal commitment was made there was nevertheless a certain moral obligation to permit the resale of the securities in Canada, and if they were resold here the seller would get Canadian dollars; but he could not ask us to convert those Canadian dollars into U.S. dollars. Therefore there is no threat in respect of our foreign exchange holdings. I can say that when certain purchases were taking place in 1943 or 1944—I am thinking particularly of Canadian dollar securities of the Dominion Government—I on more than one occasion spoke to the presidents of one or more of the very large institutions which were making these purchases for their American accounts—because it had nothing to do with their Canadian business—and I said, "Do you realize that you are buying in connection with your American business a Canadian dollar domestic security which you may be able to resell in Canada but for which you may not be able to get United States dollars? Do you realize that difficulties after the war may necessitate the continuance of foreign exchange control, if that is the government policy at that time?" The answer was: "Yes, we realize what we are doing. If you want us to cut down on this particular order at the time of the Victory Loan, if you say that you are not wanting to sell these securities in the United States, we will cut down our order." And that is what they did, in a very co-operative way, but they subsequently bought bonds in the open market. The only reply of the investment committee of the great institutions I am thinking of is, "This is a most extraordinary experience, that a foreigner should come to an American company and say he does not want their money." I did not accomplish anything. In fact, the result was a set-back because the feeling that their money was not wanted just increased their appetite.

Hon. Mr. CRERAR: They would of course naturally have a desire to help Canada during the war.

Mr. TOWERS: Oh, excuse me, I pointed out that it did not help Canada at all. It was purely a matter of their desire for an investment, nothing else. They said they were not concerned about temporary conditions, that it was an investment for a generation. Now, that is very flattering.

Hon. Mr. CRERAR: There is no danger of the flight of that capital back to the United States then?

Mr. TOWERS: On the contrary, I can think of a case where the holdings of Canadian government domestic bonds acquired during the war now aggregate \$100,000,000 in one block. In other words, a different president, a different investment committee, a different international picture and exchange outlook for Canada could cause those people to say one day: "Well, we have a decent profit on this \$100,000,000. It is time for it to come home." Without control, one man could set in train a demand for \$100,000,000 U.S. dollars in one block.

Hon. Mr. CRERAR: And you want power to prevent him from doing that?

Hon. Mr. HAYDEN: To regulate.

Mr. TOWERS: The proposal is, of course, not power to regulate, but power to say it just cannot happen at all until further notice.

Hon. Mr. CRERAR: Do you think there is any danger, say over the next five years, of Canadians, apart from Americans, desiring to seek refuge in the United States for their capital?

Mr. TOWERS: All I can say is that it has never happened before in any volume, and that is not what I would particularly fear. I think that without

control of export of capital they naturally would want to buy certain securities on the New York market. They have not been able to do so now for nearly seven years, and there is a great variety of investments there. What the volume of those purchases would be, no one can guess, but at times in the past it has been very substantial. I do not know whether that would involve a drain on our cash reserves of foreign exchange of \$100,000,000 or \$200,000,000.

Hon. Mr. CRERAR: Do you anticipate that danger might arise through excessive purchases of goods outside of Canada?

Mr. TOWERS: That is just what the objective of preventing export of capital is, to make sure as far as possible that there are no restrictions on trade.

Hon. Mr. CRERAR: You are asking for these powers to protect the external value of the Canadian dollar. I think that is the phrase used in the preamble of the bill. How would that danger arise? Do you anticipate it might arise from say, people in Canada wanting to buy United States goods to a very large extent?

Mr. TOWERS: The objective is that they should be able to buy any United States goods that they want to, but that neither the non-resident should be able to get U.S. dollars through the sale of his Canadian securities nor that our funds should be used for the purchase of U.S. securities.

Hon. Mr. CRERAR: Let me put it this way. Supposing Eaton's, which is a large retailing establishment in Canada, wanted to buy half a million dollars worth of goods in the United States for sale through its stores, there might come a time in your judgment when the Foreign Exchange Control Board would say to Eaton's, "No, you cannot do that."

Mr. TOWERS: God forbid! sir. We have never done that, and I hope we never shall under this proposed legislation.

Hon. Mr. KINLEY: But you control price, and that is the basis of all business.

Mr. TOWERS: There is that fair value provision.

The CHAIRMAN: Order! The witness belongs to Senator Crerar for the time being.

Hon. Mr. CRERAR: It seems to me there is no question that what Mr. Tower asks for in the bill gives the Foreign Exchange Control Board the power to say to Eaton's, "You must cut that down to \$200,000."

Mr. TOWERS: No, there is no such power at all.

Hon. Mr. CRERAR: Well, say \$500,000.

Mr. TOWERS: No; or \$10,000,000. They have the right at all times to make import contracts.

Mr. CRERAR: Why not make that clear in the bill?

Mr. TOWERS: I thought it was clear. There is a provision in the bill that an import contract cannot be refused by the Board.

Hon. Mr. CRERAR: There is the question of fair value.

Mr. TOWERS: Yes. If the parties to the transaction are at arms length—they would be, we will say, in the case of Eaton's—we would have no basis for questioning values. It is only when we know that the transactions are between two parties who are related to each other that the practical question of fair value arises.

The CHAIRMAN: Senator Howard, have you any questions?

Hon. Mr. HOWARD: Has the ratio of United States capital investment in Canada in the last six months increased or decreased over the previous six months?

Mr. TOWERS: The amount?

Hon. Mr. HOWARD: Yes.

Mr. TOWERS: There are really two compartments to that question. Are you referring to direct investment in business here or to the purchase of securities?

Hon. Mr. HOWARD: Both; they are almost the same thing.

Mr. TOWERS: I shall have to get those figures for you, Senator.

Hon. Mr. HOWARD: You do not know off-hand.

Mr. TOWERS: No, they are not in my memory.

Hon. Mr. HOWARD: They are running very high?

Mr. TOWERS: All I can say at the moment is that since the change in the exchange rate on July 6, naturally the purchase of ordinary market bonds has dwindled. On the other hand, it has not had any effect on certain direct investment projects.

Hon. Mr. HOWARD: My next question relates to administration. Recently a company in the United States called its preferred stock and issued new preferred at a rate of interest lower than the current rate. At the same time it issued rights to the stockholders. I was surprised to learn that a resident of Sherbrooke who wanted to take up ten shares of the new rights had been told by the Foreign Exchange Control Board, "Nothing doing. Sell your rights."

Mr. TOWERS: That was true during the war; and up to the present time there is no authority either to purchase new securities or to reinvest when a call takes place.

Hon. Mr. HOWARD: I thought that was a pretty drastic ruling when the amount involved was within \$200. That is all I have to say.

Mr. TOWERS: Excuse me, I find I have made a mistake. Reinvestment in securities which have been called has been allowed all through the exchange control. The point I went astray on was as to getting the cash to exercise the right.

Hon. Mr. HOWARD: There is no question that the securities were exchanged for new securities; but she could not take up her rights.

The CHAIRMAN: Senator Bench.

Hon. Mr. BENCH: Since I am not a member of this committee perhaps I should defer my questions until those who are members have had an opportunity to secure whatever information they desire from Mr. Towers.

The CHAIRMAN: That is all right. Go ahead.

Hon. Mr. ROBERTSON: I extended to all members of the Senate an invitation to attend and participate in the proceedings of the committee. Certainly there is no question at all that senators, whether members of this committee or not, have a perfect right to ask questions.

The CHAIRMAN: I think the witness will be questioned with greater clarity if we proceed in the order of the senators sitting around the table. I know Senator Bench is not a member of the committee.

Hon. Mr. BENCH: Thank you, Mr. Chairman. The fundamental question I have in mind I think should be dealt with by the minister. Perhaps I might ask Mr. Towers this question about a feature of the bill which seems to me to stand out in connection with section 3. The section reads:—

His Majesty is bound by this Act and, for the purposes of this Act, is deemed to be a resident when acting in right of Canada or in right of any province of Canada and a non-resident when acting in any other right.

I assume that as a result of that section the province of Ontario could not refinance a hydro issue, say, in New York without a permit from the Foreign Exchange Control Board?

Mr. TOWERS: That is true.

HON. MR. BENCH: I would point out that section 92 of the British North America Act reads as follows:—

In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

3. The borrowing of money on the sole credit of the province.

With that preliminary statement of what appears to be clearly the law in the British North America Act, I would like to ask whether or not the Foreign Exchange Control Board or the government, so far as you know, has given consideration to that matter of the exclusive jurisdiction of the provinces?

MR. TOWERS: I think, Mr. Chairman, that is a constitutional point which should be dealt with by the minister. Should it not?

THE CHAIRMAN: Yes. Have you any other questions, Senator Bench?

HON. MR. BENCH: No, not to Mr. Towers. I have a question to ask the minister later.

THE CHAIRMAN: Senator Lambert.

HON. MR. LAMBERT: You emphasized, Mr. Towers, very graphically the flight of capital. Would it be possible for you to indicate briefly the form in which capital might take its flight? You cited the purchase of securities in the United States. I would judge that that would represent the main threat in your mind as to the flight of capital, but what other forms might that take?

MR. TOWERS: Without control over export of capital, anyone who had a Canadian dollar bank balance could ask for United States dollars in exchange. That has never happened in Canada on any substantial scale, and I would not want to dress up and bogey in suggesting that control over export of capital is necessary. Therefore I assume that Canadians in the future, as in the past, would not in any circumstances get sufficiently frightened by Canada's financial position as to try to convert their bank balances into U.S. dollars. I dismiss that as highly improbable and say that the main risk is, (a) utilization of substantial amounts of U.S. dollars for purchases of American securities, not through fear but as a desirable investment; and (b) the risk which overhangs us that non-Canadians may decide that it would be better to take their money home rather than retain all their Canadian investments.

HON. MR. LAMBERT: Suppose Americans who hold large amounts of our securities sold them and withdrew the proceeds, would you consider that as a flight of capital too?

MR. TOWERS: Yes.

HON. MR. LAMBERT: If investors in the United States who had bought Dominion Government bonds or, say, those of the recent Shawinigan power flotation, wanted to sell those bonds on their side and take their money out, you would prevent their doing so just now?

MR. TOWERS: Yes.

HON. MR. LAMBERT: That naturally leads to the question, whether or not this country will continue to benefit by the investment of American capital either in the form of buying securities or direct investment in securities for the development of Canadian enterprises?

MR. TOWERS: Under conditions as we look some years ahead, it may very well be that the purchase of securities in the market, what I call purely financial transactions, will be lower than they are to-day. I do not think, however, that that will have an effect on another category of foreign investment, that is, direct investment in the development of Canadian enterprises.

HON. MR. ABBOTT: Mr. Chairman, I must ask you to excuse me. I am advised that debate has just commenced in the House of Commons on third reading of the Income Tax Bill. I hope I shall be available this afternoon.

(Hon. Mr. Abbott withdrew.)

HON. MR. LAMBERT: I should think that any practice of control which would block the investment of their capital or interfere with its return to the United States would discourage enterprising investors there from putting their capital in the development of the natural resources of this country.

MR. TOWERS: No.

HON. MR. LAMBERT: I submit that that is a fair conclusion to draw from the wide control which is sought by this bill.

MR. TOWERS: I would think the two things are in rather different compartments. When an American investor buys a million dollars worth of government bonds here he buys them because he earns a little more on the investment than he could make in his own country. He is not developing any business here, it is purely a financial transaction. That is quite different from a case where American interests feel that there is an opportunity to develop, say, a pulp mill in Canada or any other kind of manufacturing enterprise, in which they become either the sole owners or operators, which is the normal practice, or in some cases come in as a partnership. That is a very common type of investment.

HON. MR. LAMBERT: I quite appreciate that. A man comes in to establish an industry. But I recall very distinctly meeting a most interesting person from the United States who had a large portfolio filled with some \$12,000,000 worth of Dominion government bonds. He represented a very large family trust and paid periodical visits to this country. He also would have a certain percentage of his investments in what he considered good industrial or power utilities. It seems to me that those investments represented a pretty close second factor at any rate in the development of our country by maintaining in the United States this financial interest in Canada. I do not think there should be any tendency to prevent that person from at any time negotiating his holdings here into some other form of investment which he might consider more advantageous to himself. We cannot very well interfere with such an investor, particularly when he has got to distinguish between sound investments and securities of a very speculative nature.

MR. TOWERS: Of course, we do not in fact interfere with Americans making investments in Canada. I think what you have in mind is that the continuance of foreign exchange control would discourage them from doing so by refusing to give them back United States dollars when they sell their securities here; in other words, refusing to allow them to withdraw their capital. I do not think anyone would argue that foreign exchange control is a desirable thing in itself; certainly not; but the problem is the alternative. I would say this: if there were no control over the export of capital, and if that produced a situation where foreign exchange resources were going down and it looked as if they were going to be insufficient, then with the worry you have a complete freeze-up in regard to any new investments, because the foreigner who contemplates investing in a new enterprise will feel after looking around the world that the various countries have got out on the end of the limb in foreign exchange resources.

When they have, one of the things they are forced to do is to embark on a qualitative control of imports, but in some cases before they do so they refuse to permit interest on dividends to be sent outside the country. That is what the foreign investor is concerned with, particularly the one who is investing in a plant. He wants to know if he can get his profits back home. In countries

where they got into a poor foreign exchange position they have, in many cases I may say, taken it out on the foreign investor. First of all they have frozen his profits, they have not allowed him to remit them home. If export of capital threatened to produce that situation in Canada, you would not have any more direct investments.

Hon. Mr. LAMBERT: The disturbing factors in the situation which make it necessary to have a certain measure of exchange control at the present time are not the factors that exist between Canada and the United States; they are due, if anything, to the factors that have developed between this country and Great Britain and the continent of Europe. Am I not correct in saying that the policy of the Foreign Exchange Control Board at the present time, judging from Mr. Rasminsky's evidence before the Banking and Commerce Committee of the House of Commons, as set out in No. 2 of the Minutes and Proceedings of Evidence of that committee, is that there is no necessity whatsoever for any formalities in connection with transactions with the United Kingdom simply because we have a great surplus on our side of the ledger now, due very largely, I suppose, to the loans of upwards of \$3,000,000,000?

Mr. TOWERS: We have not got any sterling, but our current receipts from the United Kingdom are very substantial; therefore we can readily afford to buy.

Hon. Mr. LAMBERT: Let me read from this Mr. Rasminsky's evidence:—

The reason for that of course is that the United Kingdom and the rest of the sterling area has an adverse balance with Canada. They tend to be short of Canadian dollars. Nothing gives us greater pleasure than to see transfers of Canadian dollars to the sterling area or purchases of sterling, which comes to the same thing. There is therefore no point in any formalities or in our asking what the money is to be used for, whether it is a current account transaction or whether it is a capital transaction. So far as the United States is concerned it is the United States which is the large owner of Canadian securities. If there were any attempt on the part of Canadians to export their capital from Canada—which there is not at the present time—it would, as things stand now, in all probability be towards the United States rather than towards any other part of the world that they would attempt to export their capital. It is therefore particularly with the United States that it would be inappropriate for us to attempt to operate a pure exchange stabilization fund which did not look to the underlying transaction giving rise to the demand for foreign exchange.

I quote that simply to bring out the contrast in the policy of the Foreign Exchange Control Board towards the exchange rate of the pound sterling and that of United States.

Mr. TOWERS: To put it another way, as the result of the war and the loss of foreign exchange reserves of the United Kingdom in Western Europe, many of our best customers have no United States dollars with which to pay us in full for surplus imports.

Hon. Mr. LAMBERT: There again you come back to the old technique prior to the war, when our imports from the United States greatly exceeded our exports to that country, and balances were cleared periodically by virtue of the excess of exports from Great Britain to other parts of the world. Great Britain is trying to regain her export business, and at the present time it is, I understand, equal to or in excess of what it was in 1939. If our excess of imports from the United States in the ordinary course of trade now as before the war continues, our surplus holdings of American dollars in this country will tend to diminish?

Mr. TOWERS: Yes.

Hon. Mr. LAMBERT: Then is there not very good reason for thinking that before long British exports will again be a factor in this triangular clearing of accounts between Great Britain, Canada and the United States?

Mr. TOWERS: Yes. In other words to be really successful not only in re-establishing but in greatly improving her export position all around the world the United Kingdom will in a few years time when the transition period credits are exhausted, have to get on her own feet from successfully exporting in volume double that of pre-war years. In those circumstances the volume of our sales to the United Kingdom and to certain European countries will then give us ample United States dollars with which to meet our debt to the United States. That is the hope, but one cannot forget that the process is one of normally expanding business.

Hon. Mr. LAMBERT: I have drawn my own conclusions from the evidence given to the Commons Banking and Commerce Committee and the discussion which took place in that House. It seems to me that one feature of our financial policy today should be to help Great Britain by means, might I say, of limiting to a certain amount our own imports from United States and at the same time encouraging the development of our imports from Great Britain—something which could be influenced by the control of foreign exchange.

Mr. TOWERS: The Foreign Exchange Control Board has no influence, no power, nothing which has any bearing on that situation at all. The only exception is this: if someone wanted to remit money to London for any purpose, as matters now stand that is allowed; but in fact very few people want to, so that the contribution to trade arising from capital remittances is something you could put into a hat.

Hon. Mr. LAMBERT: Then may I ask this concluding question? It relates to what Senator Crerar was dealing with, the possibility of interfering with the ordinary flow of trade between the United States and Canada. In discussing three methods of foreign exchange control Mr. Rasminsky said:—

The third method, and the method which the government in introducing this measure has decided to follow, is the method of exchange control. That is a method under which the government takes power to fix the rate of exchange and stands ready to buy and sell foreign exchange at those fixed prices provided that, through its mechanism, the Foreign Exchange Control Board approves the type of transaction giving rise to the exchange transaction itself.

In that preliminary statement which Mr. Rasminsky made before the committee of the other House I think he expressed the very essence of control more thoroughly than he did in the discussion later on. In other words, in order to have a surplus of exchange, control must extend to the trade transaction, which is the basic factor in determining our international relations.

Mr. TOWERS: No.

Hon. Mr. LAMBERT: But with the depletion of the surplus of foreign exchange, as a result of the historical fact that we import more goods from the United States than we export, it would lead to the point where permits would have to be very carefully scrutinized.

Mr. TOWERS: That would require a change in this proposed legislation, because, by the legislation it was established that the Foreign Exchange Control Board has no power to withhold a permit in respect to imports or exports of goods involving—perhaps I should not say fraud.

Hon. Mr. HOWARD: Undervaluation.

Mr. TOWERS: Yes, undervaluation. It will be recalled that during the war there was a time when certain imports from hard currency countries, mainly

the United States, were prohibited and certain others were cut down. That was not by power exercised by the Foreign Exchange Control Board.

Hon. Mr. LAMBERT: In connection with the question of permits sections 25 and 26 are quite definite about permission to import or export in and out of Canada in accordance with a permit. I presume that the permit is issued on instructions of the Foreign Exchange Control Board?

Mr. TOWERS: It is automatic because section 25(2) reads:—

The board shall not withhold a permit for the export of goods from Canada—

Section 26(2) reads:

The board shall not withhold a permit for the import of goods into Canada—

The design there is to make sure that the board has absolutely no power over trade in goods.

Hon. Mr. LAMBERT: It is thus limited by the words "the fair value thereof".

Mr. TOWERS: Yes, the fair value clause is an exception.

Hon. Mr. LAMBERT: Does that bring in the National Revenue Department?

Mr. TOWERS: The National Revenue would have an interest in it.

Hon. Mr. LAMBERT: Would this involve anything approaching the arbitrary valuation by customs authorities which were imposed under the old tariff system?

Mr. TOWERS: No.

Hon. Mr. LAMBERT: On the question of the establishment of fair value I am a little confused as to what is actually involved.

Mr. TOWERS: The number of cases which occurred during the war is not very large, but the amounts have a certain interest. Of course we find these things out after the event has taken place; in other words, a permit has never been, to my knowledge, refused at the border in such cases. But if, upon investigation we come to the conclusion that a subsidiary company here is selling to its parent at too low a price, we then enter into discussions with the company, and have the power to refuse future permits for exportation unless we come to an agreement in regard to fair value put upon the goods. Admittedly that is the exercise of power; but, there is an appeal to the Exchequer Court should we seem to be arbitrary or unreasonable. In the past we have been able to come to an agreement in all cases, and naturally under those circumstances we do not argue over small things. The cases I am thinking of were instances where we believed the degree of undervaluation to be very substantial. When we finally came to an agreement with those concerned, the Department of National Revenue was naturally interested in the picture.

Hon. Mr. LAMBERT: I should think that conditions might arise in this country, under the administration of this control, where it would be very necessary to restrict the quantity of imports.

Mr. TOWERS: Do you mean to impose regulations on imports?

Hon. Mr. LAMBERT: Yes, by the permit system.

Mr. TOWERS: The board is not allowing those.

Hon. Mr. LAMBERT: But the board can advise, and whatever authority controls this permit system seems to me to exercise power found in this bill.

Mr. TOWERS: There is no power under this legislation to restrict this importation of goods.

Hon. Mr. BENCH: It withholds permits subject only to the qualifications in the exception provisions.

Mr. TOWERS: The exception of fair value, which could not possibly be exercised as a concealed method for restricting imports.

Hon. Mr. LAMBERT: I am not so sure but I will accept your assurance for that. May I ask you this hypothetical question? Assuming that the relations between Canada and the United States were to conform to the expressed aims of every lend-lease agreement and the Atlantic Charter—that there should be complete and free access to the natural resources and raw materials of this continent—would you care to state whether or not this measure would be to the advantage of Canada from an economic and financial point of view.

Mr. TOWERS: You are referring to complete freedom of trade?

Hon. Mr. LAMBERT: Yes.

Mr. TOWERS: I think it would not be my place to express an opinion in that regard.

Hon. Mr. LAMBERT: I do not wish to ask an embarrassing question, but would you relate that subject very definitely to the idealistic undertakings that were expressed at least in a diplomatic way during the war?

The CHAIRMAN: Senator Campbell, have you any questions?

Hon. Mr. CAMPBELL: Mr. Chairman, this is a very technical subject and I do not consider myself qualified to ask any intelligent questions of Mr. Towers. However after having heard some of the questions already asked I am bold enough to ask a few.

Hon. Mr. HAIG: I warn the witness not to fall for that statement.

Hon. Mr. CAMPBELL: The purpose of the bill, Mr. Towers, is to enable Canada to maintain a favourable United States credit and gold reserve?

Mr. TOWERS: It is to enable us to use our present holdings for the purpose of meeting a deficit in our current account arising from trade; to fulfil any commitments regarding bond maturity payable in U.S. dollars; and, in this difficult transitional period, to avoid losing so much of our capital account that we are unable to retain sufficient for the other purposes I have mentioned.

Hon. Mr. CAMPBELL: The fear that you have is the loss of capital account?

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: Which might interfere with the ordinary trade relations between the two countries?

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: It is a fact that today we have an unfavourable trade balance with the United States, is it not?

Mr. TOWERS: It is.

Hon. Mr. CAMPBELL: And that situation is likely to continue?

Mr. TOWERS: As I have already said, it is very dangerous to make predictions, but a loss of \$600,000,000 in that respect over the next two years is by no means impossible.

Hon. Mr. CAMPBELL: Is it not true that we have always had an unfavourable trade balance with the United States?

Mr. TOWERS: Yes. In times of depression it gets almost into a balance but in good times it is substantially unfavourable.

Hon. Mr. CAMPBELL: How has that situation been met in the past before the institution of foreign exchange control?

Mr. TOWERS: Sometimes by borrowings, sometimes by reason of the fact that in our dealings with other countries—for instance the Commonwealth and Europe—we have had a surplus fund available to meet the American deficit.

Hon. Mr. CAMPBELL: That is the surplus U.S. funds would come from trade with the United Kingdom?

Mr. TOWERS: Or the continent.

Hon. Mr. CAMPBELL: Is it not probable that those ordinary channels of trade will reopen on the same basis after the transitional period has passed?

Mr. TOWERS: That is the \$64 question. I do not know.

Hon. Mr. CAMPBELL: That return could be assumed, could it not?

Mr. TOWERS: I think in view of the present state of world affairs that any assumption that we will revert to the prewar situation is awfully dangerous to make. Our hope is that we will.

Hon. Mr. CAMPBELL: What is our situation today insofar as the United Kingdom is concerned? We do not benefit in U.S. dollars from our trade with the U.K. today.

Mr. TOWERS: We do not at the moment; but I would not care to say that we will not benefit to some extent within the next couple of years. But having in mind their scarcity of U.S. dollars it would be unwise to count on benefitting to a substantial extent.

Hon. Mr. CAMPBELL: Your feeling today is that we must at all times be prepared to meet the unfavourable balances that will develop by reason of the trade between Canada and the United States, and that you are almost certain that we will have to use the present reserve to meet the demands?

Mr. TOWERS: Quite substantially, yes.

Hon. Mr. CAMPBELL: It is your opinion, and I take it the opinion of your board, that on that account, if on no other, some form of foreign exchange control is necessary?

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: What was the balance prior to 1939? I think you said something about \$400,000,000.

Mr. TOWERS: Do you mean our holdings of gold and U.S. dollars?

Hon. Mr. CAMPBELL: Yes. You have roughly \$1,100,000,000 more today than when we entered the war?

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: If it were not for the fear of the loss of these favourable balances by withdrawal of capital there would not be the same necessity for continuing foreign exchange control.

Mr. TOWERS: There would not; in other words, if we had no foreign debts at all the picture would be a very different one.

Hon. Mr. CAMPBELL: Could you define for the committee exactly what you mean "withdrawal of capital"?

Mr. TOWERS: I mean the case of a non-resident owner of Canadian bonds may decide to sell them in Canada, obtain Canadian dollars and then go to the bank and exchange the Canadian for U.S. dollars, which he can do if there is no control.

Hon. Mr. CAMPBELL: That is what I understand to be the meaning of withdrawal of capital. What is our indebtedness as to non-residents today? That is, what is the extent of non-residents' investments in Canada today?

Mr. TOWERS: I remember an estimate of U.S. investments in Canada, that is both direct and in the form of negotiable securities, in the neighbourhood of five billion dollars.

Hon. Mr. CAMPBELL: Do you know, roughly speaking, what it was prior to 1939?

Mr. TOWERS: In 1939 I think it was estimated as four billion and some dollars. Of course it increased during the war. May I say there that I am speaking from memory only, but I think I am close enough.

Hon. Mr. CAMPBELL: With respect to that situation there is more or less of an understanding that those who have invested since 1939 will be permitted to withdraw their funds?

Mr. TOWERS: Oh no. For those who registered their purchases of securities there is a more or less understanding, although not an absolute firm commitment. If they wished to sell them in Canada they will get a permit to do so; then having got the Canadian dollars they cannot ask us for U.S. dollars.

Hon. Mr. CAMPBELL: No, I understand that. So there is no commitment?

Mr. TOWERS: There is no foreign exchange commitment at all. In fact, the contrary.

Hon. Mr. CAMPBELL: Is it not true that with the Canadian dollar balances, we will say, in the Canadian banks, those Canadian dollars can be used in the United States? Those balances can be transferred from one holder to another?

Mr. TOWERS: In the open market in New York, yes, they can be, provided that there is someone in the United States who wants to buy Canadian dollars from his colleagues. He knows that if he buys them he can use them for a tourist trip to Canada, or to buy a house or something else here, but he cannot use them to pay for exports from Canada.

Hon. Mr. CAMPBELL: In other words, the capital must remain here?

Mr. TOWERS: Yes. It can shift between one non-resident and another, but it cannot go out.

Hon. Mr. CAMPBELL: Prior to the war, prior to the foreign exchange control regulations, a person who sold securities under similar circumstances and received Canadian dollars, would then as of right be able to go to the bank and obtain United States dollars?

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: At whatever rate of exchange was in effect at that time.

Mr. TOWERS: At the market.

Hon. Mr. CAMPBELL: And in that way, having obtained United States dollars, he would be able to export the capital from the country?

Mr. TOWERS: In obtaining the U.S. dollars he has exported it.

Hon. Mr. CAMPBELL: And that situation, you say, is one which must be watched very carefully during this transitional period and maybe for some years afterwards?

Mr. TOWERS: Yes. I did mention, as you will recall, that in the period between the two wars, as the exchange rate was allowed to fluctuate in accordance with demand and supply, that provided in that period a break on the export of Canada.

Hon. Mr. CAMPBELL: That of course would happen again if there was no foreign exchange control?

Mr. TOWERS: Yes, and no commitment in regard to stabilization rate.

Hon. Mr. CAMPBELL: With respect to the control of the rate of exchange—I do not know whether you will care to answer this question—why is it that the rate of exchange was dropped so quickly just about a month ago?

Mr. TOWERS: That is very much in the field of government policy, but if the question were not so much as to the propriety of a certain degree of change in the rate as to the advantage of doing it in steps, I would think that the advantage lay in doing it once and for all, and that a series of changes in rates—

2 per cent in July, say; 3 per cent in September, 2 per cent in January—would have caused far more upset and continuous apprehension than getting it over once and for all. But that is only a personal opinion.

Hon. Mr. CAMPBELL: It is a fact, though, is it not, that so long as there is some form of foreign exchange control the board will have control over the rate? That is, it can fix it at 10 per cent or 5 per cent?

Mr. TOWERS: Not the board, but the government.

Hon. Mr. CAMPBELL: The governor in council, on the advice of the board?

Mr. TOWERS: There are only two alternatives: to let it swing in the market wherever it wants to go, or else some body has got to stand behind a certain rate, if they have the resources.

Hon. Mr. CAMPBELL: You have defined to the committee the withdrawal of capital. The other fear that you have expressed is the export of capital. Will you now define that?

Mr. TOWERS: That is, by Canadians?

Hon. Mr. CAMPBELL: Yes.

Mr. TOWERS: That can take two forms. One form, which is not now permitted, is the purchase of U.S. securities; and the other is the export of capital for the development of certain enterprises outside the country. The latter form of export of capital is permitted under certain circumstances, not all of which I can recite from memory. But, for example, if any enterprise in Canada feels that it should acquire a foreign one because it will assist Canadian exports or assure a source of supply for imports, or that it being in the same line of business in Canada has excellent opportunities to expand that business in the United States, exports of capital of that kind are agreed upon. I have not covered the whole field, but that indicates some of the principles.

Hon. Mr. CAMPBELL: The point I have in mind is this. Assuming that you would permit Canadians to invest in foreign securities or to use their own judgment as to what capital they should risk in a new venture in the United States or to extend their present business over there, would the board not be in as favourable a position if it required a report on each transaction and retained the right to take over those securities at any time, instead of requiring the Canadian citizen to obtain a permit before entering that field?

Mr. TOWERS: With regard to the purchase of ordinary securities in the market, as distinct from direct investment in plant or whatnot, as matters stand that is not permitted at all. If it were permitted I think it would involve over a period of time a pretty substantial amount of U.S. dollars. I think it would be wrong to rely too much on those U.S. dollars being available again in case of need by vesting of the securities, that is by the government taking them over. Theoretically that could be done. I might very well be that they were taken over and sold at a time when market conditions were bad and when it would be a very painful process for the Canadian investor. Perhaps the wartime situation is something of an illustration of that. There was a time during the war when it looked as if we might have to do that very thing, that is, requisition the United States security holdings of our investors and sell them in the United States, as the United Kingdom was forced to do. If we had got to the bottom of the barrel and had had to ask for lend-lease we would have had to go through that wringer. Fortunately we survived sufficiently long so that the Hyde Park agreement came into effect, and once that was fixed we knew that we would not have to requisition those securities. But suppose we had had to requisition them—and we easily might have had to do that—then the process would have been a painful one for Canadian investors because the securities would have been sold at prices which bear no relation to present prices, in fact at prices which in many cases are one-half of the present prices. I may be unduly pessimistic, because my business

experience goes back only twenty-seven years, and there have been many ups and downs in that period, but I have usually found that when you have to make a sale because you are in a fix it usually turns out that it is a very painful sale. The conditions under which we might be in this foreign exchange fix, and faced with an export of capital would probably be ones where the international and political and financial situation was looking rather dark, and might very well be one where security prices in the United States were very painful.

Hon. Mr. CAMPBELL: The value of the United States securities held by Canadians is taken into consideration in determining United States credit?

Mr. TOWERS: Oh, no, we have not taken that into consideration.

Hon. Mr. CAMPBELL: That is a favourable situation, though, in connection with the United States credit and the gold reserve?

Mr. TOWERS: That is, if one counts in the possibility of requisitioning them from our residents.

Hon. Mr. CAMPBELL: Would it not be a sort of offset as against the foreign investments in Canada? For instance, our commitments to the United States residents would be to some extent offset by Canadian investments in the United States?

Mr. TOWERS: Yes. You are thinking particularly of marketable investments?

Mr. CAMPBELL: Yes.

Mr. TOWERS: An inventory of those was taken at the beginning of the war. I do not know whether the figure has ever been mentioned—if it is mentioned at all it should be by the minister—and of course we do not know today's value. Since 1939 up to the end of 1945 some 230 odd million dollars of sales have taken place, but at prices much higher than those of 1939. What the present value of those holdings is I could not say, but it is not a large one.

Hon. Mr. McGEER: Mr. Chairman, before we adjourn may I ask if Mr. Towers could get certain information supplemental to the annual report of the board? Have you the annual report there, Mr. Towers?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: On page 7 there is a table headed, "Foreign investment in Canada, 1939." I wonder if we could get that for, say, 1920, 1925, 1929—I understand the figures before 1925 are not complete, and if they are not complete then 1925 and 1929 will do.

Hon. Mr. ROEBUCK: Why not get the figures after 1939?

Hon. Mr. McGEER: Yes, from 1939 to 1945 inclusive. And on page 8 there is a chart headed "Canadian dollar and pound sterling in New York: 1919-45." That shows the relation of the Canadian dollar to the pound sterling in the New York market, I take it?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Could we have a similar chart made showing the relation of the Canadian and the American dollar exchange?

Mr. TOWERS: Well, this is the Canadian dollar in New York and the pound sterling in New York.

Hon. Mr. McGEER: How is it related to the American dollar?

Mr. TOWERS: This chart shows the value of the Canadian dollar in terms of the American dollar.

Hon. Mr. McGEER: And the value of the pound sterling?

Mr. TOWERS: In terms of the American dollar.

Hon. Mr. McGEER: Could we get a chart showing the variation of the American dollar in Canada? Would that be any different?

Mr. TOWERS: No, it is the same thing.

Hon. Mr. McGEER: Then on page 8 there is a chart headed "Canadian Dollar and Pound Sterling in New York: 1919-45." That, I take it, shows the relation of the Canadian dollar to the pound sterling in the New York market?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Could we have a similar chart made showing the relation of Canadian and American dollar exchange?

Mr. TOWERS: This is the Canadian dollar in New York and the pound sterling in New York.

Hon. Mr. McGEER: I see. Is ours related to the American dollar?

Mr. TOWERS: This chart shows the value of the Canadian dollar in terms of the American dollar.

Hon. Mr. McGEER: And the value of the pound sterling?

Mr. TOWERS: In terms of the American dollar.

Hon. Mr. McGEER: Could we get a chart showing the variation of the American dollar to the Canadian? Would that be any different?

Mr. TOWERS: No, it is the same thing.

Hon. Mr. McGEER: On page 20 there is a table of Canada's holdings of gold and U.S. dollars from September, 1939, to December, 1945. Could we have that from 1920 to 1939?

Mr. TOWERS: There are no comparable figures. We could get the Dominion government's or later the Bank of Canada's holdings of gold during that period—

Hon. Mr. McGEER: And an estimate of United States dollars?

Mr. TOWERS: —but we could not make any estimate of the private holdings during that time.

Hon. Mr. McGEER: Are not the returns from the banks filed with the government?

Mr. TOWERS: Yes, the bank holdings. By private I mean—

Hon. Mr. McGEER: If we get the bank holdings we can leave out the private holdings.

Mr. TOWERS: In respect of the banks we can get the gold holdings, but not the net United States dollar holdings. However, I think the best thing is for us to bring what we can.

Hon. Mr. McGEER: I would ask you to get as close as you can comparable figures, if they are available. Then advances by the Dominion government; could we get the rates of interest that were charged on those various advances, and the cost to the government of the moneys loaned to the Foreign Exchange Control Board? That is, what did the government pay for the money, the \$300,000,000 that it advanced?

Mr. TOWERS: I think the rates of interest are mentioned in the report. In any event they are readily available. As to the cost to the government, I think the Finance Department would have to give you that, because it depends whether you take the short-time rate, the average rate, or what—

Hon. Mr. McGEER: I do not care whether it is short or long.

Hon. Mr. KINLEY: Before we adjourn, I wonder whether Mr. Towers would amplify his statement with regard to Canada's rather extraordinary external debt, which he said is the largest in the world.

Hon. Mr. HAIG: I move that the Committee adjourn until 4.30 this afternoon.

Hon. Mr. HAYDEN: Or until the Senate rises, which ever first occurs.

Hon. Mr. CRERAR: Why not make it four o'clock?

At one o'clock the Committee adjourned until four o'clock.

The committee resumed at 5 p.m.

The CHAIRMAN: Are you through, Senator Campbell?

Hon. Mr. CAMPBELL: Mr. Towers, you were speaking of the restrictions on Canadians investing abroad. I think you suggested a figure around \$350,000,000 of foreign investments now held by Canadians in marketable securities.

Mr. TOWERS: I suggested that there might be something to that order, but I did so with some diffidence because of the lack of accurate information.

Hon. Mr. CAMPBELL: Is that one matter which should seriously concern you with respect to foreign exchange balances?

Mr. TOWERS: Incidentally, if I may go back: I do not recall that I used the figure \$350,000,000, and if I did it was a tremendously rough estimate; I think it would be somewhat less than that. I should think in marketable investments, and again I am guessing, it would be \$250,000,000 to \$300,000,000.

Hon. Mr. CAMPBELL: Irrespective of what it is, so long as the board had control to take over those investments it would not be a serious matter with respect to our foreign balances?

Mr. TOWERS: I do not quite follow that question.

Hon. Mr. CAMPBELL: You have said that one of the reasons for your fears was that our foreign credits might diminish upon the export of capital.

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: By having Canadians invest in foreign securities.

Mr. TOWERS: In adding to their holdings.

Hon. Mr. CAMPBELL: Or adding to their holdings abroad.

Mr. TOWERS: Yes.

Hon. Mr. CAMPBELL: I suggest that so long as the board has control that at any time they can take over those investments, and that anyone investing abroad does so subject to that provision, that it should not seriously affect our United States credits.

Mr. TOWERS: My comment there in fact was that if at a later date our foreign cash resources were diminished to the extent that the requisitioning of those securities was necessary it might very well prove to be a painful process in the sense that the holder might very well incur a substantial loss.

Hon. Mr. CAMPBELL: I remember that that was your explanation; but it would be a painful process so far as the holders were concerned, and might not be pleasant as far as the administration was concerned to take the securities over and realize upon them when the market was low.

Mr. TOWERS: And of course if they did lose it would mean a loss in U.S. dollars so far as the country is concerned.

Hon. Mr. CAMPBELL: But that is really not a very serious situation in the light of past experience with foreign investments.

Mr. TOWERS: There is no information in regard to exchange of Canadians on balances over the last thirty years in the New York stock market; and of course this is a feature which does not have any bearing on the policy we are talking about; it is sort of on the side. I would not be of the impression that Canada had beaten the American market over the course of the last twenty-five years.

Hon. Mr. HAIG: You could make your statement much stronger than that.

Hon. Mr. CAMPBELL: Senator Lambert has suggested that so long as foreign securities are held by Canadians and you have the privilege of taking them over, you would be on the assets side.

Mr. TOWERS: A potential foreign asset, that is correct.

Hon. Mr. CAMPBELL: And the practice today is not to permit Canadians to invest or extend their foreign holdings.

Mr. TOWERS: That is the case.

Hon. Mr. CAMPBELL: And it is proposed under this legislation to continue that power.

Mr. TOWERS: In other words the proposal is to keep the present exchange resources in an absolutely liquid form where they are instantly available, and where they are not exposed to any diminution to the falling of price.

Hon. Mr. CAMPBELL: That in effect I suppose forces Canadians who have money to invest, to invest it in Canadian securities? Is that part and parcel of the proposal?

Mr. TOWERS: It is not the objective, but it is a by-product of the policy.

Hon. Mr. CAMPBELL: It is a result of the blocking of Canadian investments.

Mr. TOWERS: It is a question of this: If a man cannot buy certain securities on the New York stock market, will he leave those funds uninvested or will he buy Canadian securities? That is his own decision.

Hon. Mr. CAMPBELL: You also spoke of adverse trade balances; that is, so long as we can keep our trade balances in fair balance then there will not be any serious drain on our foreign exchange reserve.

Mr. TOWERS: So long as we can keep our trade balances for which we receive payment in balance, there would not be a drain on our U.S. holdings.

Hon. Mr. CAMPBELL: You are speaking of U.S. cash credits.

Mr. TOWERS: Yes; but, in fact, as I indicated I believe that there will be a substantial drain on our U.S. dollar holdings over the next two years.

Hon. Mr. CAMPBELL: Is it the source from which there will be the greatest drain over the next two years?

Mr. TOWERS: It is the only form of drain which we experience, because the cash reserves of the country are carried in terms of gold and U.S. dollars, and any net deficit in our accounts is settled in that form.

Hon. Mr. CAMPBELL: I should like to ask one more question. Assuming we had no controls, would the fact that there is a deficit financing in the country have any effect on our exchange position, or would it be likely to have any effect?

Mr. TOWERS: I think that question relates in part to confidence, does it not?

Hon. Mr. CAMPBELL: I suppose so.

Mr. TOWERS: Or it is strictly on the economic side in assuming that no alteration of confidence is felt in Canada by Canadians or non-residents?

Hon. Mr. CAMPBELL: I was thinking really on the economic side, but I suppose it is both. It is natural to assume that if there was continued deficit financing over many years there might be a loss of confidence by foreign investors; but, on the economic side is there anything in your opinion that influences that effect?

Mr. TOWERS: It would depend on the general economic situation in the country.

Hon. Mr. CAMPBELL: Internal?

Mr. TOWERS: Internal. What bearing deficit financing had on our internal economic situation is another subject, but the internal economic situation is what would count. For instance, if the United States had a serious depression and Canada did not; i.e., if the level of employment and national income in

Canada was relatively quite bad, then we would have a drain on our foreign exchange resources and would have to make up our minds as to what course of action should be followed:

Hon. Mr. CAMPBELL: It seems to me that one of the principal items which you fear might adversely affect our United States dollar credit position is the withdrawal of capital, over which you have effective control now and over which you would have effective control without legislation of this kind, so long as you could refuse to permit the withdrawal of capital in United States dollars.

Mr. TOWERS: But of course that refusal would not be possible, as I understand it, without legislation of this kind.

Hon. Mr. CAMPBELL: Not necessarily legislation of this kind; but supposing that a person was required to give, say, 60 days' notice before he withdrew his funds, and having given that notice would be required to withdraw his funds within a definite period, do you not think that would be sufficient control?

Mr. TOWERS: From our past experience, in so far as we can anticipate the future, an orderly withdrawal, if there was one, which—

Hon. Mr. CAMPBELL: Which the country could easily stand.

Mr. TOWERS: I cannot quite follow how that would work. You mean that there would be no control, but that people—that is non-residents as well as residents—would be asked to give notice?

Hon. Mr. CAMPBELL: There would be control. They would be required to give, say, 60 days' notice. For instance, power could be granted to the governor in council to make by order in council regulations fixing the terms upon which those funds could be withdrawn.

Mr. TOWERS: The terms upon which the board or the government would sell U.S. dollars?

Hon. Mr. CAMPBELL: That is right.

Mr. TOWERS: To the non-resident who desired to take out his capital or the resident who desired to purchase securities abroad?

Hon. Mr. CAMPBELL: I was leaving it at the non-resident who desired to withdraw his funds.

Mr. TOWERS: I would say that as everyone should be treated in the same way, that arrangement would mean that any non-resident who wished to withdraw his capital would be allowed to do so until further notice.

Hon. Mr. CAMPBELL: Yes, until some sort of crisis arose. In the light of the experience of the past and in view of our economic position today, do you think there would be any great danger of a withdrawal of large sums of money from Canada?

Mr. TOWERS: That requires a prediction in regard to the attitude of non-residents over the next few years. I would not care to make any prediction in that respect, but I did suggest this morning that non-residents will see that our foreign exchange resources are going down substantially during the time by—again I am just suggesting an order of magnitude, rather than making a definite prediction—\$600,000,000 or more. Is there any risk of that causing the slightest disturbance, or is the international situation likely to be so stable during the next few years that there will not be a slight impairment of confidence? After all, it requires only a very slight worry to make them desire to withdraw those funds in a substantial amount.

Hon. Mr. CAMPBELL: You are again speaking of the next few years. I agree that there should be some form of exchange control in the next few years.

Mr. TOWERS: Incidentally, I should add this, that I have mentioned a two-year period because it was as long ahead as one even dared to make a guess on the current account deficit. We will assume that the existing credits to two

other countries have been practically used up in two years, and what happens after that remains to be seen—I mean the extent to which those countries can then buy from us and the extent to which we can receive settlements in U.S. dollars.

Hon. Mr. CAMPBELL: Is it true that non-residents are no longer permitted to bring in United States funds for investment in Canada?

Mr. TOWERS: Oh, indeed they are permitted, yes.

Hon. Mr. CAMPBELL: I mean as registered funds, so that they can sell them in the Canadian market.

Mr. TOWERS: So far as bonds are concerned, no. We are no longer registering those purchases with a view to subsequent resale. So far as purchases of stocks are concerned, preferred or common, those are still being registered.

Hon. Mr. CAMPBELL: Suppose a Canadian subsidiary of an American company desires to obtain long-term credits in the United States for capital account, is it permitted to make borrowings from the parent company in the United States today?

Mr. TOWERS: In terms of Canadian dollars, yes. In terms of U.S. dollars, no, not as matters stand.

Hon. Mr. CAMPBELL: It can obtain U.S. dollars for trade credits?

Mr. TOWERS: Oh, yes.

The CHAIRMAN: Are you through, Senator Campbell?

Hon. Mr. CAMPBELL: Yes.

The CHAIRMAN: I will call on Senator Bench, who, I understand, deferred a question that he wished to ask the minister.

Hon. Mr. BENCH: Just a point or two, if you please, Mr. Abbott. The first one has to do with section 3 of the bill, which reads as follows:—

His Majesty is bound by this Act and, for the purposes of this Act, is deemed to be a resident when acting in right of Canada or in right of any province of Canada and a non-resident when acting in any other right.

It occurs to me that that raises a constitutional question as to whether or not the enactment of that section is *intra vires* of this parliament, having regard to the provisions of section 92 of the British North America Act, particularly subsection 3. As you will recall, that reads:—

92. In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

3. The borrowing of money on the sole credit of the province.

And then you will recall that subsection 16 of that section, the catch-all subsection, says:—

16. Generally all matters of a merely local or private nature in the province.

With particular reference to subsection 3 of section 92, I was asking Mr. Towers this morning what the position would be if, say, the Ontario Hydro-Electric Commission wanted to refinance a borrowing in New York. Apparently under section 3 of the bill the Commission would require to have a permit from your board to do so.

Hon. Mr. ABBOTT: I should think that is right. The intention of the section is, of course, to subject the Dominion Government and Provincial Governments to the same control with respect to exchange as any citizen of the country.

Hon. Mr. BENCH: What I am wondering is about the constitutional aspect, having regard to subsection 3 of section 92 of the British North America Act. Has that been given any consideration?

Hon. Mr. ABBOTT: As I recall, that question was raised in the Banking and Commerce Committee of the Commons by Mr. Hazen—I do not know whether it was on this section; I think it was in connection with another section—and at the time I advised him that the bill had of course been approved by the Department of Justice and that it had also received the personal consideration of the Minister of Justice, but that I thought we had better get Mr. Varcoe's opinion on the point raised. It was left at that, the committee having risen without its being called to my attention or the attention of the chairman that Mr. Varcoe's opinion has not been obtained. Since the question has been raised here, I think it would be desirable for this committee to have Mr. Varcoe's opinion. I do not think it would be appropriate for me to express a legal opinion on a matter of that kind . . . Oh, excuse me, Mr. Cleaver, the Chairman of the Commons Banking and Commerce Committee, has just told me that that opinion was obtained by the committee. I was not able to attend all the sittings of the committee, so I was not aware of this. I have in my hand the report of the committee's meeting on July 25, 1946, at which Mr. Varcoe's letter was read into the record. Would the committee care to have me read it now?

Hon. Mr. BENCH: I would like to have it.

Hon. Mr. ABBOTT: The letter is dated Ottawa, July 23, 1946. It is addressed to Mr. Cleaver, the Chairman of the Banking and Commerce Committee of the Commons, and reads as follows:—

J.R. 11-450-45

Re: Bill 195 to enact the Foreign
Exchange Control Act

DEAR MR. CLEAVER:

The proposals contained in Bill 195 are designed to maintain the value of Canadian currency in terms of the currencies of other countries, particularly those with which Canadians enjoy commercial relations. The objects of the measure are to be attained by fixing exchange rates, regulating transactions in foreign currency and in Canadian currency dealt in by non-residents and regulating exports and imports and transactions in securities between residents and non-residents. A Control Board operating under the direction of the Minister of Finance is to administer the Act. Persons engaged in business are required to furnish full information. Persons engaging in transactions in foreign exchange are required to keep records of such transactions and to furnish information. Enforcement provisions enable the Board to exercise control over the property of any person where this is necessary to insure observance of the Act and define as criminal offences acts or omissions which are breaches or evasions of the statute punishable by fine or imprisonment.

Such a legislative proposal appears to me to be clearly beyond the power of a provincial legislature. In any case, the exclusive authority of parliament to legislate in relation to currency, legal tender, banking, bills of exchange, regulation of trade and commerce and criminal law would seem to me to be quite adequate to support the bill from a constitutional point of view.

Such a system of control as is envisaged requires various ancillary provisions for the purpose of preventing the scheme of the Act from being defeated. I refer to the measures to regulate and prohibit transactions in property and securities between residents and non-residents. If parliament adopts the legislation, it will be on the basis that it deems it necessary in this connection to prohibit and regulate these transactions ordinarily within the exclusive jurisdiction of the legislatures of the provinces. I do not doubt that it is open to parliament to deal with such

matters as part of the projected scheme of regulation and once the statute is enacted the provincial legislatures would be precluded from interfering.

Yours very truly,

(Sgd.) F. P. VARCOE,
Deputy Minister.

Hon. Mr. BENCH: With great respect to Mr. Varcoe's opinion, I do not regard it as dealing with the point I have in mind. I am suggesting that by enacting section 3 of the bill parliament may be encroaching upon the exclusive rights of the provinces to borrow money on their sole credit.

Hon. Mr. ABBOTT: As I say, I do not think it is either my duty nor would it be proper for me to express a legal opinion on that point. For what it may be worth, in my view all that we are doing in the case of a provincial government is to say this: If you desire to obtain foreign exchange to meet your obligations abroad, you must obtain it from the official source. If a province should wish to borrow abroad unofficially, I suppose it would be open to it to do so.

Hon. Mr. BENCH: Do you know if the provinces were consulted on this particular section?

Hon. Mr. ABBOTT: I cannot say off-hand. I was told that the province of Ontario was in favour of the measure, but that is just heresay.

Hon. Mr. BENCH: As I am instructed, it would appear that loans of the magnitude that ordinarily are required by, say, the Ontario Hydro Commission, are borrowed at a better rate of interest in New York than in this country.

Hon. Mr. ABBOTT: That is true, but on the other hand the cost to the Hydro might be very much greater if the exchange fell to a discount of five per cent, as it has done on former occasions. I know corporations having loans in the United States formerly found it very embarrassing under certain circumstances. This section is to ensure that as far as possible there will be common treatment in exchange matters, and that the government of Canada will handle the exchange problems of the provincial governments on the same basis that we require a private individual or a corporation to do so. That is the purpose of the legislation. As I say, I think on the constitutional point it would be better, if this committee feels it is necessary, for the Justice Department to be asked for an opinion on the specific point which Senator Bench has raised.

Hon. Mr. BENCH: It is not proper anyway to debate legal points before this committee. But I was wondering whether or not the provinces had been consulted on that matter.

Hon. Mr. ABBOTT: I doubt whether the provinces generally have been consulted, I think it is most unlikely.

Hon. Mr. BENCH: This morning you stated what the government's position is in regard to carrying on under the existing order in council and emergency powers legislation. I think you stated that the emergency powers act must be dealt with within fifteen days after the end of the next session.

Hon. Mr. ABBOTT: All orders in council will lapse fifteen days after the end of the next ensuing session of parliament. As suggested now, presumably that will be sixty days.

Hon. Mr. BENCH: And it is now proposed to amend the bill to extend its operation to sixty days?

Hon. Mr. ABBOTT: It is hoped that will be done. There does not appear to be any opposition to the suggestion.

Hon. Mr. BENCH: It might be well in amending the Emergency Transitional Powers Act to extend the sixty days right through to the end of the next ensuing session.

Hon. Mr. ABBOTT: I doubt whether the House of Commons will accept that suggestion, for this reason: The National Emergency Transitional Powers Act covers a very wide variety of subjects. Under that act the government can now legislate by order in council on a great variety of subjects. There are still a considerable number of orders in council still outstanding. We are endeavouring to get rid of them as fast as we can. A committee of the cabinet has been sitting reviewing these various orders. Each minister has been asked to go over those which affect his particular department so we may get rid of as many as we can, but it is quite evident that some of these orders in council will have to be carried forward. It seems apparent that by March of next year a good many of them will no longer be necessary. It is also fairly apparent, I think, that in the early part of next session one of two things will have to be done: either the National Emergency Transitional Powers Act will have to be further extended, or else we shall have to embody in separate acts a number of measures which are now handled by order in council.

Therefore it was felt to be most desirable that at this session we should put into law as many of these matters which will have to be continued beyond the end of next March, shall we say. The committee may recall that at the end of the 1945 session, the Minister of Finance indicated that it would be necessary to continue foreign exchange control for some considerable time. On the 1st of last March he made a speech in Toronto in which he repeated that statement and indicated in some detail the reasons why it was felt to be necessary. If I may go back, it was stated that the measure was not introduced in 1945 because the session was a short one. This bill was introduced in the House of Commons on the 17th of June and was printed at that time. The hearings before the Banking and Commerce Committee of the House of Commons, went on as this committee knows for some time, and we were doing our best to push it along, but as honourable senators are aware, there has been a fairly heavy legislative program this session, and the bill did not get through the committee until a week or so ago. No one regrets that more than I do, but it seems inevitable that some legislation at any rate comes to the Upper House late on in the session. It is not the fault of the government, as I say, that this measure has not come here earlier, for the ordinary processes of legislation seem to take a good deal of time. But I would point this out, the bill has been available for study for those who are interested for at least two months.

Hon. Mr. BENCH: You would not suggest that delays in the House of Commons would be any justification for this House pushing the bill through?

Hon. Mr. ABBOTT: On the contrary, I think this House should stay here and give the bill thorough consideration. I do think it is important that the bill should be disposed of this session, but I do not suggest for a moment that the Senate should restrain its consideration of the measure; just the contrary.

Hon. Mr. BENCH: Your position is that the National Emergency Transitional Powers Act will probably have to be further extended?

Hon. Mr. ABBOTT: No, I would not think so. I hope that in the first sixty days of the opening of the next session we shall have what bills we need ready to bring down to the House. It will be quite a scramble. The House will have to "step on it"—If I may use that phrase—and it will mean that we shall have to put into legislative form various matters which are now dealt with by orders in council.

Hon. Mr. BENCH: In that sixty-day period, if this measure had to be treated in statutory form, it could be introduced here in the Senate, could it not?

Hon. Mr. ABBOTT: I suppose it could. I have not considered whether it is a money bill or not. But if I may say so, it seems to me it would be a great duplication of work, in view of the considerable time that has already been put in on the study of the bill by the House of Commons Banking and Commerce Committee and by this House.

Hon. Mr. BENCH: It seems to me, Mr. Abbott, that inasmuch as the government has these powers now by order in council, even if this measure had to be treated at the next session of parliament, within sixty days of the opening of the session it could be started here, and we would have a reasonable opportunity of dealing with it. If in fact the National Emergency Transitional Powers Act is extended, as it probably will be, then is it necessary that provision should be made for the order in council?

Hon. Mr. ABBOTT: That would depend on the attitude of the other House.

Hon. Mr. BENCH: My personal position is this, I doubt whether the Senate can give proper consideration to this bill in the dying days of the session, which probably will come to an end in the next four or five days.

Hon. Mr. ABBOTT: We need not stop the session quite as quickly as that, because, as you know, the Senate is the master, the Commons cannot adjourn until this House adjourns. I have to stay here in Ottawa, although I should like to get away myself.

Hon. Mr. McGEER: Before this bill is passed we should have the views of people in the business and commercial life of this country.

Hon. Mr. ABBOTT: May I say a word on that? In the Commons Banking and Commerce Committee—I realize that does not apply here—it was considered appropriate to ask for suggestions from the Canadian Bankers Association, because the banks are vitally interested in the operation of foreign exchange. Accordingly the chairman of the committee wrote to the President of the Association early in July, and I have a copy of the reply from Mr. Rogers, the secretary. If the committee would like me to read it I will do so.

The CHAIRMAN: By all means.

Hon. Mr. ABBOTT: This letter is dated Montreal, July 25, 1946, and is addressed to the Chairman of the House of Commons Banking and Commerce Committee. It reads:—

Foreign Exchange Control Bill

DEAR MR. CLEAVER:—We duly received your letter of July 17, asking that you be advised if any of our members would like to make suggestions concerning the above bill.

Your request was placed before our members but none felt that either they or the Association on their behalf would like to make any submissions to your committee in this connection.

We wish, however, to thank you for your courtesy in affording us the opportunity of being heard.

I remember a suggestion was made to me privately by Mr. Macdonnell that the banks and commercial interests should be heard. I told him that would be entirely satisfactory so far as the government was concerned. For what reason I do not know the banks did not care to come forward. I do not know what the commercial interests might want to do.

Hon. Mr. BENCH: In any event, this question is back to the order in council now, which gives the Board all the powers that would be conferred on it by this bill.

Hon. Mr. ABBOTT: Greater powers in fact.

Hon. Mr. BENCH: And the order in council will continue in force until at least sixty days after the commencement of the next session.

Hon. Mr. ABBOTT: That is right.

Hon. Mr. LAMBERT: As a matter of practical policy, in the light of negotiations already in progress between the dominion and the provinces, would you care to say that it would be desirable to have the co-operation of the provinces in connection with this section of the bill, in asking for a permit in regard to their finances.

Hon. Mr. ABBOTT: I think it would certainly be desirable to have the support of the provinces in a matter of this kind. As Mr. Towers pointed out this morning, the use of the word "permit" is a little misleading. I should think that the provinces that have external obligations, and I know there are a considerable number, would find the provisions of the exchange control very much to their advantage under existing world conditions.

Hon. Mr. LAMBERT: As a matter of practical policy, the relations between the dominion and provinces would not be prejudiced by the imposition of this clause?

Hon. Mr. ABBOTT: I do not know; I would not think so. If this is a measure which is in the interest of the people of Canada I should think that the provinces would agree. It certainly is not intended in any way to encroach upon the independence of the provinces or their rights within the provincial sphere; there is no such intention and of course it was not suggested.

Hon. Mr. LAMBERT: If they were agreeable, would it be fair to assume or to suggest the possibility of a representation by the provinces on the Foreign Exchange Control Board.

Hon. Mr. ABBOTT: The difficulty there, as I see it, is that the exercise of foreign exchange control is very much a question of high government policy, and the board is only the instrument of the Minister of Finance, who is a minister of the government of the day; it is his responsibility, and a responsibility which the dominion government must assume and be prepared to justify. I do not see how the dominion government could divide a responsibility of that kind with the provinces. I think if we have foreign exchange control at all that it is a matter of high national policy, which the national government must determine.

Hon. Mr. LAMBERT: I think you have answered the question I had in mind. Another point I was going to bring up was based upon what bearing control has on the prospective budget and financing of this country. We have a budget for this year which shows deficit financing to a certain extent. Would you care to express an opinion, as the Acting Minister of Finance, as to whether you would anticipate deficit financing in the future, and if so, if the policy of the exchange control to conserve Canadian dollars in Canada would not be designed to help to meet that situation.

Hon. Mr. ABBOTT: The second part of your question is pretty technical, and I do not think I should express an opinion. On the first part, that is as to whether I anticipate continued deficit financing in Canada: As I said yesterday in the house in answer to a question on another matter, I have never claimed the gift of prophecy but if I may express an opinion I would say that we would get a balanced budget in the not-too-distant future; and personally, so far as I am concerned I am not an advocate of continued deficit financing. However, one cannot prophesy the budget much more than twelve months ahead.

Hon. Mr. LAMBERT: With the budget of at least \$2,000,000,000 as it is in this country, the problem of raising revenue to that extent, under conditions as they exist in the world to-day, might give rise to the thought in the minds of advisers in exchange control that it would be necessary to conserve Canadian dollars so far as possible in order to have them invested in our own country, similar to the policy followed during the war.

Hon. Mr. ABBOTT: I do not think the policy is actuated by the desire to save Canadian dollars for investment in Canada securities. The exchange control policy is designed, as Mr. Towers said, to conserve our U.S. dollar resources; and as the trade relations between Canada and the United States are so important that it represents probably one of the most important economic problems which the country has to face; it is the problem of getting a sufficient number of U.S. dollars to take care of our commitments in the United States. That is a problem which is shared by a good many other countries in the world to-day, as Mr. Towers has pointed out, but it is a particularly important one to Canada in view of her heavy indebted position. The measure is not designed to compel the people to keep their money in Canada in order to invest it in Canadian securities.

Hon. Mr. LAMBERT: Thank you very much.

Hon. Mr. CRERAR: Has the government given any serious consideration, Mr. Abbott, to increasing the protection against the decline of the external value of our dollar by the development of tourist traffic and the encouragement of the production of gold in Canada?

Hon. Mr. ABBOTT: As the committee knows, the government is continuing to propose fiscal legislation and we hope for the opening up of new gold mines. In respect to the tourist traffic the answer is again in the affirmative. We are spending considerable sums of money in the dominion estimates for our tourist bureau for the purpose of encouraging American tourists to come in. Judging from what I have seen in Montreal in the last two or three week-ends I have spent there they are pouring in; there is not much left in the way of goods for Canadians to buy.

Hon. Mr. CAMPBELL: There is one further question I should like to ask, following Senator Bench, in an effort to try to find a solution; I think his difficulty arises largely as a result of the lateness of the arrival of this proposed legislation. If the present controls are sufficient—and I assume they are, because they have been functioning well—would it not be possible to introduce a simple piece of legislation to control matters for a period of one year, or until the end of the next session of parliament, apart altogether from emergency legislation? I do not think there is anyone in this committee who wishes to do anything which might endanger our foreign exchange control position, or to interfere in any way with the excellent work that has been done by the Foreign Exchange Control Board during the war. I believe what troubles members of this committee, and the members of our house more than anything else, is that this legislation is introduced as a permanent measure without time limit.

Hon. Mr. ABBOTT: We referred to that this morning.

Hon. Mr. CAMPBELL: But it is very extensive in character. I should hope that within the next year, if exchange control is necessary in some respect that we might be able to free certain classes of people such as tourists and those engaged in ordinary business transactions, so long as they report the transactions.

Hon. Mr. ABBOTT: I should think that is desirable, Senator Campbell, but I do feel that in the interests of effective administration that it is almost impractical to do that by legislation. I think this was given most careful consideration, and I do feel that there must be sufficient flexibility to enable the government of the day to decide whether conditions at the moment are such that it can allow tourists to take out \$1,000—to use that as an example—but a month or two months later conditions may have changed to such an extent that the figure might have to be cut down. It seems to me that if the measure is to work fairly in the interests of all concerned that there should be a considerable degree of discretion left with the administrative agency. I have given the matter of time limit a good deal of thought, and I indicated this morning that the government would be prepared to consider along the lines

suggested. I would be prepared to include in the suggested time limit the provision that on the joint addresses of both houses it could be either extended or repealed. I do however feel that it is a mistake to hold out to the public, or to allow the people to believe there is any real prospect of our not being able to eliminate exchange control within such a period as a year. The government feels that would be a mistake. Under those circumstances I do not know that I can add anything.

The Committee adjourned until 8 p.m.

The committee resumed at 8 p.m.

The CHAIRMAN: Honourable members, I realize that I have to some extent been remiss in my duties as chairman of this committee. I take it that the committee this morning expressed the wish that after a member has concluded his questions he should not have another chance to examine the witness until every other senator present had had a chance to put questions.

I was going to call upon Senator Haig next, but he is not present at the moment; I suppose we should reserve his turn for him. Senator Sinclair has stated he does not wish to ask any questions. Next in line is Senator Euler.

Hon. Mr. EULER: Mr. Chairman, not pretending for one moment to be an economist, nor even a lawyer—if I may put it that way—I shall have little to say. I take it from what Mr. Towers has said that the chief purpose in maintaining exchange control is to conserve American dollars in Canada. That is perhaps the chief purpose?

Mr. TOWERS: The chief purpose.

Hon. Mr. EULER: And you do that and have done so by measures which prohibit the export of capital?

Mr. TOWERS: Yes.

Hon. Mr. EULER: You have now, I think you said, about one and one-half billion dollars of American exchange.

Mr. TOWERS: That is of gold and U.S. dollars.

Hon. Mr. EULER: Well, gold is the same thing?

Mr. TOWERS: The same thing.

Hon. Mr. EULER: You rather anticipate, I understand, that that balance will probably be diminished in the next two years by something like \$600,000,000?

Mr. TOWERS: Yes.

Hon. Mr. EULER: Say \$300,000,000 a year, because of the unfavourable balance of exchange?

Mr. TOWERS: Partly because of the unfavourable balance in current account transactions, and partly because of some paying off of maturities or callable issues.

Hon. Mr. EULER: I think that practically all Canadians dislike these controls and would like to see them lightened as much as possible, and in fact altogether abolished as soon as possible. It just occurred to me to mention two things, which I think have been mentioned before, on which I should like to get your opinion or perhaps that of Mr. Abbott. One is this. If gold, as you say, is just as important as American dollars or currency, would it not tend to relieve the situation considerably and conserve your stock of exchange if the production of gold could be greatly increased?

Mr. TOWERS: An increase in the export of any Canadian commodity to the United States or to other countries which pay us in U.S. dollars would help our current account situation.

Hon. Mr. EULER: Would that not be one way of doing it? We have large deposits of gold.

Mr. TOWERS: Gold is one of the things the additional export of which would help our current account situation, just as wheat is. For example, we were extraordinarily fortunate from an exchange point of view in the fact that in 1943-45 we sold \$550,000,000 of wheat and coarse grains to the United States.

Hon. Mr. EULER: The fact that the price of gold was increased helped some too, did it not?

Mr. TOWERS: In 1933, yes, it did.

Hon. Mr. EULER: May I ask—perhaps this is a question that ought to be submitted to Mr. Abbott—do you not think it would be worthwhile to make some effort, by whatever action the government might see fit to take in the way of taxation changes, to make possible a much higher production of gold, in order to relieve the situation?

Hon. Mr. ABBOTT: It all depends on how much it would cost to produce the gold, Senator. I would say there is a limit beyond which any government should go in diverting men, materials and machinery to the production of any commodity such as gold, which is sold at a fixed price in the United States. It is true that up to the present and so far as one can see in the future the United States treasury will buy gold at \$35 per ounce, U.S. funds.

Hon. Mr. EULER: Not much doubt about that, is there?

Hon. Mr. ABBOTT: I should not think so, no. But they have been doing that for some time and they have accumulated very large stocks of gold—as Mr. Towers has indicated, about twenty billion dollars. The fact that one can get \$35 U.S. funds for gold to-day depends upon the willingness of the United States to continue to purchase it at that figure. If it were not for that willingness, gold would not have any such value. I think we all appreciate that. It has a certain value for commercial purposes. There are some other countries which would like to buy it—India and some others have been mentioned—but they are not countries which possess U.S. dollars, and I do not think Canadians would be interested in selling gold to Indians for rupees, or to some other countries for sterling. So the value of gold as an international medium of exchange to-day depends upon the continued willingness of the United States to accumulate gold. I have no idea how long they will be willing to do that. If I were directing American policy I think I would call a halt to it at some time.

Hon. Mr. EULER: Have you any reason whatever for thinking that the United States would not take all the gold that we could offer?

Hon. Mr. ABBOTT: No; but on the other hand I do not think it would be economic for Canada to continue to stimulate the production of gold in areas where it costs a great deal more, shall I say, than \$35 an ounce to get the gold out of the ground.

Hon. Mr. EULER: You think that is the case?

Hon. Mr. ABBOTT: Yes, for what it is worth I think that is the case.

Hon. Mr. EULER: I am of course referring to the recent budget and taxation.

Hon. Mr. ABBOTT: Mind you, before 1933, I think, the price of gold was \$20.67 an ounce. There was a great deal of criticism of Mr. Roosevelt's action in revaluing the price of gold. In my opinion I do not think this country can lift itself by its boot-straps by subsidizing the price of gold.

Hon. Mr. EULER: I am not suggesting that we should subsidize the price of gold. I am merely asking—and of course the answer is self-evident—whether if you had a much larger production of gold you would not improve your standing so far as American exchange is concerned. There is no question about that, is there, Mr. Towers?

Mr. TOWERS: That is correct.

Hon. Mr. EULER: Then it just becomes a matter of doing such things as will make it possible to increase our production of gold. Another question that I want to ask Mr. Towers is this. Now that our dollar is at par with the American dollar and therefore will buy more than it used to in the United States, will that tend to increase our purchases in that country?

Mr. TOWERS: In the normal course of events I would say it would tend to do so. Under existing conditions importations from the United States are governed not so much by price as by ability to get goods. At the moment, then, and for perhaps a year to come, I think our purchases would be of the same volume whether or not the American dollar was at a 10 per cent premium or at par. But over a longer term the ability to get United States goods at a somewhat lower cost in Canadian dollars would tend to increase the purchases.

Hon. Mr. EULER: Then of course it would follow that to that extent it would diminish your supply of American dollars. It would affect your stock pile—if I may call it so—of American exchange.

Mr. TOWERS: Yes.

Hon. Mr. EULER: On the other hand, will the fact that the American dollar will not buy so much in Canada as it did before tend to diminish purchases in Canada?

Mr. TOWERS: I do not think so; or, if so, to a very small extent, because their purchases under existing tariff relationships between the two countries tend to an enormous extent to be of the raw materials which they need, and the volume of those purchases is largely governed by the degree of activity and prosperity within the United States.

Hon. Mr. EULER: What is the amount of Canadian investments in American securities?

Mr. TOWERS: That I do not know. In response to questions earlier I was rash enough to say that the value of negotiable American securities owned by Canadians might be \$250,000,000 to \$300,000,000.

Hon. Mr. EULER: Is that the total of our investments in the United States?

Mr. TOWERS: Those are marketable securities. Over and above the total investment there are certain direct investments in major American companies.

Hon. Mr. EULER: They would run to more than a billion dollars would they not?

Mr. TOWERS: I do not think so. If I may go from guess work to the Dominion Bureau of Statistics figures I can give you a more satisfactory answer. As of December, 1939, for all kinds of investments—marketable securities, direct investments, investments of our railroads there in subsidiary railways—the total was \$898,000,000. That estimate, so far as bonds are concerned, is based on current prices; as to stocks or investments in subsidiaries, it is book value. So you can see it is very much of an estimate. Since 1939 we have realized on \$368,000,000 of our capital holdings. So if book values and bond prices are the same as in 1939 our United States investments to-day are worth \$530,000,000. That includes direct investments and the railway assets in the States.

Hon. Mr. EULER: Are you comparing them on exactly the same basis as American investments in Canada?

Mr. TOWERS: Yes, they are made up in the same way.

Hon. Mr. EULER: So I suppose you might take that as a set-off against American investments in this country?

Mr. TOWERS: Yes.

Hon. Mr. EULER: Would you say that by reason of wiping off the discount on Canadian funds there has been a pretty heavy loss to Canada by the suddenness with which it was done?

Mr. TOWERS: No.

Hon. Mr. EULER: I do not know whether I should ask you this question; it may not come within the purview of this particular bill. What were the advantages of wiping it off so suddenly?

Mr. TOWERS: Wiping it off at all, or suddenly?

Hon. Mr. EULER: Take it both ways.

Mr. TOWERS: On the question of at all, that was a matter of major government policy of course, the reasons for which have been explained and on which I do not think I should speak. As for the desirability of doing it in one fell swoop, so to speak, rather than in two or more stages, my personal opinion would be that doing it in one move was better for Canada and created less uncertainty than if there had been two or three changes in the rate of discount. The change took place at a time and under conditions where for a great many industries it was possible, if not immediately then pretty soon, to increase their foreign selling price. As a result I do not think that any great Canadian industry is likely to be seriously prejudiced, except for that one industry whose price is fixed.

Hon. Mr. EULER: That is all, Mr. Chairman.

The CHAIRMAN: Senator Haig?

Hon. Mr. HAIG: My questions have been pretty well covered by the answers to preceding questions, and especially by the answer the Acting Minister of Finance gave me this morning.

I may say, Mr. Towers, I shall ask you some questions, but you need not answer them, and I shall not feel at all hurt if you do not. Since on the 6th day of July you put our money on a parity with United States money what do you do about our dollar in New York? I understand our money is at a discount there of from three to three and a half per cent.

Mr. TOWERS: Yes.

Hon. Mr. HAIG: Who absorbs that loss when you give us United States currency?

Mr. TOWERS: That price in the unofficial open market in New York is established by dealings between non-residents; it does not directly affect Canada. In other words, an American who holds certain Canadian dollars in a bank account here is at liberty to sell those dollars to another American at any price they see fit to establish between themselves. There were times in the early stages of the war when those transactions took place at a discount of about twenty-five per cent. Suppose one American wants to sell those dollars, he tries to find another American who wishes to buy. The American who buys them may want to take a trip to Canada. He can use these dollars for that purpose, or buy a house here or some securities here; but he cannot use those dollars on the unofficial market to pay for Canadian exports or services. It is a non-resident market in which Canadians never intervene.

Hon. Mr. HAIG: When you put that control on news of it reached our city about seven o'clock that night. The banks closed at three o'clock. What happened to customers if the banks who from three o'clock until six o'clock took

in American exchange, who made the loss? Before you answer let me call to your mind that when they took that money in the law was that they must turn it into the bank next day, and of course they could not do so at the former rate. Who suffered that loss?

Mr. TOWERS: I am sorry to say that the merchants or others who took in that United States currency after banking hours did suffer the loss which you mention. I think it was very unfortunate that they had to do so. I do not know that there was any practical means by which the Foreign Exchange Control Board could assume that loss.

Hon. Mr. HAIG: The object of this proposed legislation is to control the flight of capital?

Mr. TOWERS: Yes. "Flight" may be a strong word in respect to some aspects of it, that is, the possible purchase of American securities by Canadians—not that they were afraid of Canada's position but they wanted to make investments.

Hon. Mr. HAIG: No, I am taking the word in the sense in which you used it.

Mr. TOWERS: Yes.

Hon. Mr. HAIG: You think it safer for us Canadians to have that money conserved so that our exports and imports can more easily continue without any curbs on our trade?

Mr. TOWERS: Yes.

Hon. Mr. HAIG: You suggested this morning—I am not trying to pin you down—that at least looking twenty-four months ahead you would need some controls during that period?

Mr. TOWERS: I do not think I put it quite that way, but in making some perhaps rash guesses in regard to the decline in our holdings of gold and United States dollars during that time, I thought it possible that they might go down to \$600,000,000 or \$700,000,000. That would be a very formidable decrease, and taken in conjunction with the uncertainties of the international situation during that period of two years and after, it seemed to me to be trusting too much to Providence to assume that we could go down so fast and at the same time respond to any demand there might be for United States dollars for the purpose of taking capital out of the country; that the load of the two things was probably more than we could bear.

Hon. Mr. HAIG: Another question. The government now gives assistance to ex-service personnel, both male and female, who desire to take up university courses or post-graduate courses. Some of these post-graduate courses are not available in Canada, but they are in the United States. How would those desiring to take advantage of those courses in the United States get United States currency?

Mr. TOWERS: They will have no difficulty about that. I might say that even at the worst period of the war, when our exchange dollars were at the very lowest, those who needed to take education in the United States of a character which it could reasonably be argued was not available in Canada, were supplied university funds for that purpose. Of course, there is all the more necessity for following that policy to-day.

Hon. Mr. HAIG: All that is required is a certificate from a university?

Mr. TOWERS: There would not be the slightest difficulty on that score. As a matter of fact it was done all through the war.

Hon. Mr. HAIG: I want to ask Mr. Abbott a question on section 3. I for one should like an opinion from the Deputy Minister on the constitutionality of that section.

Hon. Mr. ABBOTT: The Deputy Minister of Justice?

Hon. Mr. HAIG: Yes.

Hon. Mr. ABBOTT: I will see that that is obtained.

Hon. Mr. HAIG: Another question, Mr. Towers. You need not answer it unless you wish to. All policies of the Board are either submitted to the government in advance or received from the government before you put them into effect?

Mr. TOWERS: That is right.

Hon. Mr. HAIG: That is all.

The CHAIRMAN: Senator McGuire?

Hon. Mr. MCGUIRE: I should like to ask Mr. Abbott a question. Now that exchange between Canada and the United States has been equalized, what is your intention with regard to Canadian currency, will it remain at par or close to par, or can you say what you would expect it to be?

Hon. Mr. ABBOTT: That question, Senator, is almost impossible for me to answer. Whether Canadian currency will stay at par with American currency or not will depend on so many factors, such as the uncertainty of the price level in United States compared with the price level here, that it is not possible for me to make any prediction. In view of the close relations between the two countries, I would hope that our currencies would stay at par. There is a great psychological advantage in their remaining in that position, but obviously if the Canadian dollar would buy considerably more in Canada than the American dollar would buy in the United States, it would not be possible to continue parity indefinitely; and the reverse would be true.

Hon. Mr. MCGUIRE: Caused partly no doubt by direct action by your government?

Hon. Mr. ABBOTT: Well, it is difficult to say how much governmental action could influence the relative values of the two currencies. Some steps which the government might take would help to mitigate influences which would make a sudden increase or decrease, but in the end we cannot lift ourselves by our boot straps, and the government cannot make the Canadian dollar worth more on the exchanges than it really is worth.

Hon. Mr. WHITE: Mr. Towers, assuming a time limit was embodied in this legislation, for instance, two years, and just prior to the expiration of the two-year period a crisis arose whereby our reserves were depleted—I think you mentioned the sum of \$600,000,000 might be viewed as a dangerous point—I understand you to express the fear that parliament might not re-enact the legislation. It seems to me that parliament in its wisdom would take care of a situation of that kind.

Mr. TOWERS: I think that is true. My suggestion was that if the situation was particularly difficult at that time there might be some public feeling as to whether or not the controls would be appealed. My own thought is that if the circumstances were of the type we have been discussing, that the action of parliament would be appropriate to the circumstances; but the public and business generally do not feel always absolutely certain until the thing is "fait accompli". I must add that in my remarks I was not speaking in the capacity of someone who was administering the mechanics of foreign exchange control but was rather thinking of the wider field of public uncertainty, should the thing come up at a time when the situation was particularly difficult.

Hon. Mr. KINLEY: Mr. Chairman, I submit that the matter before the committee is the subject matter of the bill; the principle has not been approved. I should like to follow up on a few questions asked by Senator Crerar dealing

with trade and commerce. Mr. Towers intimated that there would be a free movement of trade under the provisions of the bill; that is, that he could not refuse a permit for imports or exports.

Mr. TOWERS: That is right.

Hon. Mr. KINLEY: I think you will agree that there is a provision that there must be a fair price going and coming.

Mr. TOWERS: Yes.

Hon. Mr. KINLEY: Who is the judge of the fair price?

Mr. TOWERS: The Foreign Exchange Board is, in a sense, the judge. It has by the bill the power to withhold an export or an import permit if it thinks the exports are undervalued or the imports overvalued. If the Foreign Exchange Control Board does in fact take action, and the importer or exporter disagrees with it, there is provision for an appeal to the Exchequer Court. But as I mentioned earlier the board would not presume to have views in regard to either export prices or import prices unless they had reason to think that the deals were taking place between two interested parties and the prices were really false prices.

Hon. Mr. KINLEY: If you are kind and want to do it, that is what you can do; but the point is, the exporter and importer—the two men to the contract—in the final analysis have nothing to do with the price?

Mr. TOWERS: You mean the American exporter and the Canadian importer?

Hon. Mr. KINLEY: If I want to buy an article in the United States I ask for a permit, and I agree with the man in the United States to pay so much for the article.

Mr. TOWERS: He is a third party and is not a subsidiary of yours or anything of that kind?

Hon. Mr. KINLEY: He is just another business man, or I might be his agent in Canada. We cannot with any finality say that the price will be. I do not refer to what you are doing but I am saying that is the law.

Mr. TOWERS: What you say is technically correct, but I certainly think that it would be madness on the part of the board to attempt to have views in regard to prices established, so to speak, in the open market.

Hon. Mr. KINLEY: Of course I am dealing with the law, not with what the board might think. Another privilege which I regard as an important one is that you can control credit.

Mr. TOWERS: May I go back a moment? If it were practical from the point of view of drafting to say that where the deal was not at arm's length but between two interested parties who were deliberately establishing either an unnecessary high value for imports or an unnecessarily low value for exports—that is all the intention is—if it were possible to put in something which would direct the board in that situation it would of course be all to the good. I do not know if it is practical.

Hon. Mr. KINLEY: Supposing the United States dollar goes up 20 cents.

Mr. TOWERS: That has no bearing on what the board should do.

Hon. Mr. KINLEY: In the next paragraph you have the privilege to control credit and in that you must be satisfied that the man can pay within six months.

Mr. TOWERS: Not satisfied that he can pay, but the intention is that payment should be obtained.

Hon. Mr. KINLEY: Section 25 (2) reads:—

The board shall not withhold a permit for the export of goods from Canada where payment of not less than the fair value of the goods in a currency designated by the board as acceptable for such a transaction,

- (a) has been received by a resident from a non-resident and, in the case of payment in foreign currency, the foreign currency has been sold to an authorized dealer; or
- (b) is due to a resident from a non-resident under the terms of sale within six months after the goods are exported from Canada and, in the case where payment is to be made in foreign currency, the board is satisfied that the foreign currency will be offered for sale to an authorized dealer forthwith upon receipt.

Now it seems to me that price is the basis of business and credit is another very important feature. I should think if I had control of price I would have a great control over business.

Mr. TOWERS: I should say that the board has no control over price at all; it is only empowered under this proposed legislation to intervene in cases where it is very clear that export of capital is being attempted through overvaluation of imports or undervaluation of exports. In regard to that portion which refers to the terms of sale within six months unless there is authorization to the contrary, that again is an effort to prevent the exportation of capital, because if an exporter in Canada could make a sale to an importer in the United States for no payment at all or payment in twenty or thirty years hence, the control over the export of capital would completely break down.

Hon. Mr. KINLEY: I have orders now from the United States on which they will give me delivery in nine months.

Mr. TOWERS: Are those exports or imports?

Hon. Mr. KINLEY: Imports.

Mr. TOWERS: There is no provision in regard to imports.

Hon. Mr. KINLEY: I do not think we are getting anywhere, Mr. Towers, and I am not satisfied, but let us proceed. This is restrictive legislation, is it not? As I go through the bill I see that it says that no person shall do this or that.

Mr. TOWERS: Foreign exchange control, I am very sorry to say, is legislation which places certain restrictions on actions. There is no question about that.

Hon. Mr. KINLEY: I come now to section 35, dealing with the powers of the board. It reads:—

The board may make regulations

- (a) prescribing forms of applications for permits, declarations and permits, including different classes of permits;
- (b) prescribing terms and conditions to be inserted in applications and permits;

It goes on to say that everything must be done by a permit. Then in paragraph (c) you say this:—

notwithstanding anything to the contrary contained elsewhere in this act, exempting any person or any class of persons or any transaction or class of transactions from any provision of this act.

We tell them what they can do and you tell them what they cannot do.

Mr. TOWERS: I suppose that the core of the thing is that the foreign exchange control, like any other control of the kind, is the most undesirable thing. If there is any way of avoiding it without gambling with our future, that is what should be done.

Hon. Mr. HAIG: Mr. Towers, it is not fair for you to make my speech.

Mr. TOWERS: But let us say it is necessary. The question then is what is the practical way of making it operate? If it were possible to restrict the power

of the government of the day, or their creatures in administration, the board, in any way greater than that proposed here and still make the measure sufficiently flexible and workable, that would be the thing to do.

HON. MR. KINLEY: I often hear the lawyers talk about the rule of the law; this seems to be the rule of the board.

MR. TOWERS: In all the cases where discretion is given I think it is true that there is an appeal to the minister in certain things, but I admit that it does not fully cover the ground of appeal.

HON. MR. ABBOTT: I think I should point out that the regulations passed by the board have no effect until approved by the Governor in Council which means the government of the day.

HON. MR. KINLEY: But this is a power of the board given by the bill.

HON. MR. ABBOTT: That is true, Senator Kinley, but under another section the regulations made by the board must be confirmed by the Governor in Council.

HON. MR. KINLEY: I do not think you would deny that the board under this bill will have power to exempt any person or class of persons.

HON. MR. ABBOTT: Not without the approval of the Cabinet.

HON. MR. KINLEY: The appeal procedure is very limited. I cannot see very much in the provision of appeal to the Exchequer Court because the business would go to somebody else before one could get the ruling of the court as to the price of an article. You said, Mr. Towers, that the matter of the raising of the value of money was a question of high government policy.

MR. TOWERS: Yes.

HON. MR. KINLEY: What is the economic reason behind that?

MR. TOWERS: I thought that question was fully covered, speaking as a reader of the statements by the minister on that occasion.

HON. MR. KINLEY: I know that it was not very popular in Nova Scotia. The fishermen do not like anything that interferes with their trade as between Nova Scotia and the United States. It is a rather serious matter.

MR. TOWERS: I must say for myself that I do not feel that the value of Canadian currency has changed. I thought it was the United States dollar that had depreciated.

HON. MR. KINLEY: A depreciated currency is much better for trade with other countries.

MR. TOWERS: In a certain number of cases, which of course are of public record because the newspapers reported them, I did understand that Canadian exporters were able to raise their prices in the United States. I hope that is true of the exporters of fish.

HON. MR. KINLEY: No, I am afraid it is not. It seems to me that if you do not control things and let the law of supply and demand operate, the whole situation of a country will balance itself from time to time by its currency.

MR. TOWERS: I think it would have balanced itself as between the United States and Canada had prices increased here, yes; but as was indicated in the statement made on that occasion—I am not commenting now on matters of policy, because these are known facts—the American cost of living index had gone up to 142. It has not finished its rise, and I do not know where it will finish, but let us say it will be 150 or more. Well, 150 plus 10 per cent in Canada would be a pretty formidable affair for us during the next couple of years.

HON. MR. KINLEY: Mr. Towers, under this bill, if I as a business man want to make a trip to the United States, on business or pleasure, I must go to my banker for a permit to get some money.

MR. TOWERS: If you will not accuse me of quibbling, Senator Kinley, I would say that you will go to the banker anyway, whether there is foreign exchange control or not, and apart from possibly being asked to say that the money is required for travelling expenses you will find no difference.

HON. MR. KINLEY: I have read the bill but I cannot find in it a single word that obligates me to do anything if I want to take a trip. It depends upon the board's regulations whether I can get any money. All I can do is ask.

MR. TOWERS: That is true. Under existing conditions the situation is as we have indicated; i.e., you have no particular red tape at all, but if conditions should become as they were in January, 1940 the government of the day could limit travel abroad to business trips, or limit the amount that a person could take with him. The government does have that power.

HON. MR. KINLEY: The board could do that, under this bill.

MR. TOWERS: The government could, not the board.

HON. MR. KINLEY: The government may approve of your regulations, but it is the board that makes the regulations.

MR. TOWERS: But subject to approval of the Governor in Council, the powers given by the bill are conferred on government.

HON. MR. KINLEY: Look at section 62. You talk about capital, but the word is not defined in the bill. When you speak of capital you imply that you mean big money, but the egg money that the farmer's wife has in her purse is capital under this section.

MR. TOWERS: I cannot see any reference to capital, and I am a bit confused.

HON. MR. KINLEY: Suppose one of my fishermen posts a \$2 bill to his daughter in the United States, that could be confiscated under this section.

MR. TOWERS: Some discretion is allowed there.

HON. MR. KINLEY: There is no discretion as to the seizure. The owner can apply to the board and pray to get it back.

MR. TOWERS: Yes, and would get it back.

HON. MR. KINLEY: But if he got it back it would be, not because of a right to get it back but because of an act of grace on the part of the board.

MR. TOWERS: As I said earlier, in the administration of a thing of this kind it is almost inevitable that some dependence has to be placed on the common sense and regard for public opinion which those who administer the law have. I do not see any way of tying the thing up in a form which would overcome the need for common sense on the part of the administrators.

HON. MR. KINLEY: I am talking about the law. I cannot read common sense into the law; I have got to read the law as it is written. Section 62 says:—

Any currency or negotiable instrument which any person exports or attempts to export from Canada or imports or attempts to import into Canada contrary to this Act or the regulations, or which any person buys or sells or in any way deals with or attempts to buy or sell or in any way deal with contrary to this Act or the regulations, or the ownership or possession of which any person fails to declare as required by this Act shall, if the value thereof does not exceed one hundred dollars, be forfeited to His Majesty forthwith without any further act or any proceedings and may be seized by any inspector or officer.

Many people in this country will never hear about that section at all unless they get into trouble on account of it. Perhaps some day a man down in m

district will come and say to me: "Look what has happened to me. Is that what you did for me at Ottawa? You are certainly not looking after my interests very well. If I cannot post a couple of dollars to my daughter in Boston without the government seizing it, it is too bad."

MR. TOWERS: I am sure that to that man the whole thing would sound insane.

HON. MR. KINLEY: Absolutely.

HON. MR. MCGEER: And to more than that man.

HON. MR. KINLEY: And he is a citizen of this country. Now, why try to control small amounts like that? Why not put a floor of \$500 or \$1,000 in that section? A man will not be able to send a Christmas present to the United States this year unless he goes to the banker and gets a permit. And if the man happens to owe quite a bit to the bank he is likely to be told, "You had better pay up your bill here instead of sending anybody a present." I think that this bill will make a financial concentration camp of Canada.

MR. TOWERS: Well, if I thought that were true, I would say, "Let us abandon foreign exchange control and take the consequences."

HON. MR. KINLEY: I am not saying that should be done. I think we should have a screen, but not an air-tight financial compartment.

MR. TOWERS: If one only could know a practical way of doing it, I would be in complete agreement. But if you leave off control of the smaller things there is an opening through which the larger things can sometimes go out, and the control is illusory.

HON. MR. KINLEY: It is my suggestion that there should be a floor under this section. I know I will not get anywhere with my ideas, but, after all, it is big business that you want to control.

MR. TOWERS: What you say in regard to the law and technicalities is perfectly correct. And, incidentally, when I said that if the facts are as serious as you mention, let us get rid of foreign exchange control, I was speaking in perfect sincerity, because—it is perhaps not my job to speak on matters of policy, but I am completely in sympathy with what you said, if only it were practical.

HON. MR. KINLEY: Why is it not practical?

MR. TOWERS: Because I believe that if you relieve control so far as small transactions are concerned the large transactions can go out of that same door. That is why I believe there have to be those powers—dangerous though it may be to give them to anyone—and it is the duty of the board to try to make sure that the individual is bothered to the least possible extent by the exercise of the powers. So I am sure, sir, that the objective I seek to reach is exactly the same as yours; only you, for reasons I can understand, would sooner that in an instance such as you mentioned the citizen could get his money back as a matter of right rather than have to depend on administration. I perfectly understand that, only I do not see the practical way of getting at it, other than by some way of administration.

HON. MR. KINLEY: We are told that there is no price for liberty. Some people would rather be poor but free.

HON. MR. ABBOTT: Also, as Burke said, liberty has to be paid for, too.

HON. MR. KINLEY: Under the Customs Act we allowed citizens to bring back \$200 worth of goods from the United States without hindrance. A few years ago the amount was reduced to \$100. Under those conditions a man's small purchases were not interfered with by customs officers. You take away some of the value of a man's money when you say he cannot trade with his neighbour. That sort of thing will make us parochial, and parochialism is a sign of weakness.

Mr. TOWERS: The prohibitions are against transferring money to another country.

Hon. Mr. KINLEY: Or to a non-resident.

Mr. TOWERS: Which is in essence another country.

Hon. Mr. KINLEY: It was never intended by the Income Tax Act that the department would not divulge returns—not for the purpose of helping the taxpayer, but of getting all the money it could for the treasury.

The income tax feature I believe is there for the purpose of efficiency in the collection of income tax, not for the taxpayer, so that income from any source would be reported. The taxpayer is absolutely protected. Besides, the element of competition enters in, and the section should be retained.

By section 49 of the bill the Board can put a man out of business, can even make him virtually an "untouchable". The section reads:—

Where, in the opinion of the Board, it is necessary for ensuring the due observance of the provisions of this act to exercise control over the property of any person, the Board may by order prohibit absolutely or conditionally any disposition of or dealing with the property of such person, including all property which, or any right, title or interest in or to which is owned by such person, or any specified part thereof.

The Board can even put a person into bankruptcy, and then he will be finished.

Mr. TOWERS: Section 49, authorizes the Board, subject to appeal to the courts, to prohibit dealings in the property of a person when in its opinion it is necessary to do so to ensure observance of the provisions of the act. The reason for that is that exchange control offences frequently relate to illegal export of currency or other property, and when such export occurs the property is beyond control, and if the offender leaves Canada he cannot be arrested for the offence, and he may be able to employ others, unknown to the Board, to carry out illegal export of his property.

Hon. Mr. KINLEY: There is another section where if the person leaves the country you can do what you like with his property.

Mr. TOWERS: That is section 52, which authorizes the Board or the custodian appointed under section 51 to present a bankruptcy petition against the person with respect to whose property a prohibition has been issued and who remains out of Canada for the purpose of evading prosecution.

Hon. Mr. KINLEY: I do not think it is advisable to give the Board such drastic power over business.

Mr. TOWERS: It is drastic.

Hon. Mr. KINLEY: Under this bill every bank is an authorized dealer on behalf of the Board. The Acting Minister of Finance read a letter from the Bankers Association which was very significant. Under this bill every customs officer and policeman are regarded as agents of the Board. There is also authority to appoint additional agents and dealers who will have such wide powers as the Board in its judgment may give them. In short, they can do almost anything the Board wants them to do. Then the Board has inspectors and an inspector can go to a person and say, "I want to question you," and put him under oath and conduct an inquiry without reference to a court at all. I think Mr. Towers, your Board would have too much power. It is all very well for us sitting here at headquarters, but it is a different thing altogether down among the people. I have the highest opinion of the mounted police; they have to enforce the law and they do it most efficiently. But I have known of such a case as this: A ship is wrecked and part of her cargo is afloat. We sometimes hear of a fisherman taking a case of canned goods from the ocean; then a mounted policeman goes into the poor fellow's home and alarms the wife and

family while he conducts a search, and he may arrest the poor fisherman. It seems to me it is time that we who are responsible for making the laws of the country should see to it that we do not derogate all our powers to boards, whose members are perhaps earnest men, but, being specialists, they may go any length to achieve their purpose. We are told that experts or specialists sometimes look too much to the end rather than to the method. It is our job to see that they do not become autocrats.

The CHAIRMAN: I am afraid I shall have to call the honourable senator to order. This is neither the place nor the time to deliver speeches. The witnesses are here for the purpose of being cross-examined.

Hon. Mr. KINLEY: The bill is very inclusive in its terms, but I have not yet discovered anything in it to authorize the Board to cut off the wings of migratory birds! In my experience of over thirty years as a legislator, I have noticed that in the drafting of bills creating boards and conferring on them authority, the experts always asked for all-inclusive powers; they wanted to put everybody under the legislation on the principle of let those who can crawl out by exemption or prove their own innocence. That is being sought by this legislation, and it is not democratic.

Hon. Mr. LEGER: On the question, Mr. Chairman—

Hon. Mr. KINLEY: I would point out that I am addressing the chairman. If we legislators allow officials to really make the law by regulations, then we are rapidly approaching the point where we may as well have a dictator. I feel that this measure is economic nationalism run rampant.

The CHAIRMAN: May I ask a favour in behalf of Senator Leger? He has been unable to attend our sittings until a few minutes ago, and he would like to ask a few questions.

Hon. Mr. LEGER: I am sorry, Mr. Chairman, that I was unavoidably absent last week.

I should like to ask Mr. Towers this question. Take the case of a fraternal insurance company whose head office is in Canada with many branches in the United States. Those branch offices will send their premium receipts to the head office in American funds; and similarly with claims, those are sent to the head office, and naturally have to be paid in American funds. What procedure will a fraternal insurance company have to follow to comply with the provisions of this bill?

Mr. TOWERS: I cannot say what is the exact situation with respect to the class of companies you mention, but I am sure that since exchange control in September 1939, they have had no difficulty in getting American funds, and of course the present proposals would not create any such difficulty for them. However, I will investigate and find out the exact situation.

Hon. Mr. LEGER: Their situation would not be changed under this bill?

Mr. TOWERS: No.

The CHAIRMAN: Senator Gouin?

Hon. Mr. GOUIN: Mr. Chairman, I should like to ask a question about section 32, concerning services performed by a resident for a non-resident. The section seems to require a permit previously to the performing of the services. Let me cite a personal example. Suppose I receive a letter from a lawyer in New York asking for advice on a minor matter. Before answering the letter will it be necessary for me to obtain a permit?

Mr. TOWERS: No.

Hon. Mr. GOUIN: I suppose regulations will be passed to provide for such cases, but as I read section 32 am I not obliged to obtain a permit before sending a letter giving the advice requested?

Mr. TOWERS: No, you are not, unless the services rendered were services for which you would ordinarily expect and ordinarily be entitled to a fee, and in this case you wanted to perform them free of charge.

Hon. Mr. GOUIN: In this case I would have to charge a nominal fee, but it is very seldom that I do so.

Mr. TOWERS: If the ordinary practice was to perform that service free of charge, no permit is required. If, on the other hand in the ordinary course of business that was a service which should call for the payment of a fee, but you decided that for some special reason you would render a particularly valuable service free of charge, then that would require a permit.

Hon. Mr. GOUIN: The ordinary legal practice?

Mr. TOWERS: In the ordinary case where a bill is going to be sent, it does not require any permit.

Hon. Mr. VIEN: Under the bill it does.

Mr. TOWERS: I would say no. "No resident shall, except in accordance with a permit, perform or agree to perform, in Canada or elsewhere, for a non-resident any services of a kind ordinarily performed for remuneration otherwise——" That is the point——"than on terms that provide for payment within six months" of the service.

Hon. Mr. ABBOTT: The same question came up in the Commons committee. I used the same example as Senator Gouin is using now, because I am a lawyer. But I said: If I am rendering a service to a client in New York—as I have done on occasions in the past—unless I proposed to send him a bill which was not payable until twelve months later, or unless I proposed to send him no bill, I was perfectly free to render the service. If I send him the usual bill payable on demand I would not have to go near the board; I would be obliged to charge him in American dollars. That is the effect of the section.

Hon. Mr. GOUIN: Even if you render the services in Canada?

Hon. Mr. ABBOTT: Yes.

Hon. Mr. VIEN: The section is capable of another construction.

Hon. Mr. ABBOTT: It is. The drafting may not be of the best, but I think on careful reading it is clear that unless you are going to render the services for nothing where ordinarily you would charge, no permit is required.

Hon. Mr. GOUIN: Of course, in the case of taxable costs, they are not payable until judgment is rendered.

Hon. Mr. ABBOTT: Then they cannot be taxable costs.

Hon. Mr. GOUIN: The same thing. I cannot possibly regard the costs as due until the case has been disposed of.

Hon. Mr. ABBOTT: That, senator, is a matter of contract, is it not, between the lawyer and his client?

Hon. Mr. GOUIN: Then there is the question of currency designated by the board as applicable to such a transaction, as to whether it would be determined by regulation.

Mr. TOWERS: Yes, that is so. In the case of services rendered to people in the United States the currency designated is naturally United States currency.

Hon. Mr. GOUIN: Now, Mr. Towers, I come to section 34, concerning the obligations of a resident owning a company, and so on, carrying on business outside of Canada. Under this section the Board may require a resident to do such acts as may be necessary and are within his power to procure the declaration and payment of dividends and so on. Could you explain shortly the purpose of the section?

Mr. TOWERS: Yes. It is designed to ensure remittance to Canada of the earnings of foreign subsidiaries of Canadian companies to the extent that it is practicable for those companies to do so without the impairment of their business. That later qualification is a matter for discussion between the Board and the parent company. The powers involved, while they do not affect a great many people, can of course be regarded as formidable powers, and much would depend on their being exercised in a way which gave full regard to the need of the foreign subsidiary. The general objection is that the export of capital should not take place through the deliberate accumulation abroad of earnings by these subsidiaries in a desire to avoid repatriating those earnings to Canada; bear in mind that other people, exporters or those who hold American securities, those in receipt of incomes from them, are obliged to sell the proceeds of the exports or the proceeds of the interest on dividends to Canada to maintain current earnings in foreign currency, so that we can meet our obligations. It would not, I should think, be desirable to have subsidiaries retain all their earnings in foreign countries and contribute nothing to the good of Canada. That at least is the thought underlying that particular section.

Hon. Mr. GOUIN: But there is no appeal from the decisions here?

Mr. TOWERS: There is an appeal to the minister.

Hon. Mr. VIEN: I should like to inquire if, under the agreement for loan between United States and Canada to the United Kingdom there are not provisions compelling the United Kingdom and Canada, as a corollary to that obligation, to remove all the trade barriers, and as a matter of fact, even to revive the British preference. My question is directed to this point: are not these regulations creating a barrier of a character which the provisions of the loan by the United States and Canada to the United Kingdom intended to remove?

Mr. TOWERS: No, I would not say that. Canada of course has not received any loan from the United States, and therefore is not bound by any contractual obligations to the United States. Perhaps I misunderstood your earlier remarks.

Hon. Mr. VIEN: In that respect may I point out that in the act passed by parliament respecting the loans to Britain, one of the provisions was that all the agreements between the United Kingdom and the United States will apply to the Canadian loan. Is that not correct?

Mr. TOWERS: Broadly speaking it is true, in respect to the particular thought you have, that is, the freeing of trade by making sterling convertible. The United Kingdom takes that obligation versus Canada, because she is taking it versus the United States. That is the obligation to make current earnings of sterling convertible. The United Kingdom of course does not take any obligation to remove quantitative restrictions on imports; however that may be, Canada, except in respect of her obligations in the fund, has not taken on any commitments. Perhaps that is rather academic because foreign exchange control provisions do not affect the freedom of international trade in commodities and services in any way except a favourable way.

Hon. Mr. VIEN: Maybe that is true and maybe it is not. As pointed out by Senator Kinley the two parties are prevented from entering into an agreement because there is no finality as to the fixing of the price of the commodities before the board has approved of it. That might be a subject of difficulty.

Mr. TOWERS: If it should ever operate that way, or in any one case affect it as much as \$10, then the whole administration has gone wrong.

Hon. Mr. VIEN: In respect to the matter of an appeal to the Exchequer Court, if a big merchant in Montreal dealing with an extensive producer in New York, agrees on a transaction and the board says no, the prices of the goods purchased should be so and so, the parties cannot agree; then the recourse

to the Exchequer Court with the possibility of obtaining judgment in ten or twelve months is purely an illusion.

Mr. TOWERS: Of course the board should question fair value only when it has reason to believe—a lawyer would use a better word—there is fraud. For instance, if a subsidiary company were selling to its parent company in the United States a product at a price which is not its market value it does not necessarily constitute fraud—a lawyer would use a more appropriate term—however, I would know that it is something against the Foreign Exchange Control Board regulations as well as against the income tax regulations.

Hon. Mr. VIEN: The Wartime Prices and Trade Board is an organization parallel to the Foreign Exchange Control Board.

Mr. TOWERS: It performs a different function.

Hon. Mr. VIEN: But from the point of view of the integrity of the officials and their desire to serve the country I should say that they are parallel agencies.

Mr. TOWERS: I would hate to contradict that statement.

Hon. Mr. VIEN: I take this opportunity to say that I have seen in the operations of the Wartime Prices and Trade Board almost scandalous—I would not say dishonest—errors in judgment. I do not care to enlarge on that statement, but may I say that the same opportunity for error of judgment would exist on the part of someone in the Foreign Exchange Control Board. Suppose a Canadian manufacturer induced an officer of the Foreign Exchange Control Board to keep the product of a competitor in the United States out of this country, it would certainly be a barrier to trade between the two countries. It might not occur frequently and perhaps it is not probable but it certainly is possible. In the vast volume of transactions which would have to be submitted to the officers of your board, who would have to pass judgment on each individual case, I would see numerous opportunities of keeping out of this country certain products of foreign producers which Canadian manufacturers do not like to see in this country because of the effect of competition.

Mr. TOWERS: Of course the entry, in the first instance, of imports is automatic, and the so-called permit is simply a declaration on the usual customs entry form in regard to value.

Hon. Mr. VIEN: To make my point clear may I give an illustration? I met in Montreal recently a lawyer and manufacturer from New York who had just returned from Washington. He referred to this bill and said it was abhorrent to the financial authorities of the United States, as being intended to defeat the purpose of the provisions in the agreement with the United Kingdom between Canada and the United States. He told me that he was informed in New York that it was the intention of the United Kingdom to establish a board of this nature so as to defeat the purpose of the conference that is to be held shortly in Washington. He used picturesque language in describing these United Kingdom traders, and he said that they were simply trying to defeat the provisions of the loan to Britain by enacting regulations which could not be done under the provisions of the loan.

Mr. TOWERS: I would take that remark with a considerable number of grains of salt, because I believe the United Kingdom is going to introduce in its parliament a bill for peacetime statutory regulations to replace the wartime orders in council. The United Kingdom will of course continue the quantitative regulations on imports; that is recognized by the United States and has been all along. All that is hoped for is that, in due course, as the situation in the United Kingdom gets better that they may be able to remove any quantitative control of imports. For the next three, four or five years it is absolutely impossible for them to do so. In connection with their loan from the United States they

have agreed that when they apply the quantitative control they will do so in a way which is non-discriminatory as between countries, and which will pay due regard to historic *i.e.* prewar sources of supply.

Hon. Mr. VIEN: Do you treat as Canadian U.S. dollar balances the investments by Canadians in U.S. marketable securities?

Mr. TOWERS: We have some knowledge, although not accurate knowledge—

Hon. Mr. VIEN: Were the securities not all registered?

Mr. TOWERS: They were registered in 1939, but the registration has not been kept up to date. To do so of course would have required the handling of a large amount of paper work which it was considered desirable not to carry on. We know what the securities were in 1939, but we have not accurate knowledge of what they are now.

Hon. Mr. VIEN: Supposing I wanted to invest \$1,000 in U.S. Steel or some other marketable U.S. securities, I could not do so without coming to the board for leave.

Mr. TOWERS: If it was in the form of asking the board for \$1,000 in U.S. cash with which to buy that security the answer since 1939 would be no.

Hon. Mr. VIEN: What about the situation now?

Mr. TOWERS: It is the same situation now.

Hon. Mr. VIEN: But British investments in Canada are considered by the United Kingdom treasury as Canadian dollar balances, are they not?

Mr. TOWERS: Not as Canadian dollar balances, but as something which adds to the current earnings of the United Kingdom in this country, and therefore helps them to buy here, in the same way as the interest in dividends from interest in our investment helps us to buy in that country.

Hon. Mr. VIEN: Why would it therefore be injurious to Canadian credit if Canadians were permitted to invest in United States dollar securities?

Mr. TOWERS: What would happen in that case is that Canadians would obtain from the Foreign Exchange Control Board a certain amount, say \$100,000,000 or \$200,000,000—it is hard to say how much of our present holdings of U.S. dollars and invest those funds in American securities. The question was raised earlier during the meeting of this committee as to whether that might not be perfectly all right, on the assumption that in case of dire need the Canadian government could forcibly requisition from Canadian residents those holdings of American securities, sell them in the United States and get cash. That is possible, I suppose. We did not do it during the war. As I say, I suppose it is possible, but I suggested that in the type of circumstances where that amount would have to be taken you might find that the securities were being wrested from the Canadian holders under market conditions and at prices which might be very painful. It would have been very painful to the Canadian holders of securities if it had been done in 1940.

Hon. Mr. VIEN: But would you consider that at this time in post-war days it would be seriously inconvenient and dangerous for our economic relationships with the United States and the stabilization of our currency that we should have freedom of investments?

Mr. TOWERS: The United States does not care a bit about our having freedom of investment. The interest is solely a Canadian one, and the Canadian question is: Could we by buying United States securities make some money? Well, if we could—speaking from the non-foreign-exchange-control point of view, just as a Canadian individual—I would be glad to see that happen, but it does mean parting from a very substantial amount of our cash reserves which are kept in liquid form, taking the chance of their going into securities, and the

subsequent chance of requisitioning those securities and converting them into cash.

Hon. Mr. VIEN: If I invested tomorrow in U.S. securities, for instance, under your regulations and in practice is it necessary to register such investments with the Foreign Exchange Control Board?

Mr. TOWERS: No. I mean, new investments in cash are not allowed, but if I as a holder of American securities decided to sell one group and buy another, for example, that need not be reported.

Hon. Mr. VIEN: In what particular does this bill add to or detract from the powers that the Foreign Exchange Control Board possesses under the foreign exchange control order?

Mr. TOWERS: There are various places where it restricts them, and various places where it makes additional provisions for an appeal to the court, and so forth. The comparison could be recited in detail, although it would be fairly lengthy. It would only be coherent if one did it from the basis of a memorandum.

Hon. Mr. VIEN: Have we got a memorandum setting out the additional powers or the powers that have been deleted? I saw a statement that was made in the other place. I must confess that I was unable—because of my own density, of course—to make head or tail of it.

Mr. TOWERS: The only additional power is the one in section 34. The restrictions of powers as compared with the present order are more numerous.

Hon. Mr. VIEN: I am sorry, I did not catch that.

Mr. TOWERS: The only additional new power is found in section 34. There are a number of restrictions, but I would need to have a memorandum made up on those restrictions, which are more detailed.

Hon. Mr. VIEN: If we could have a clear summary of the differences between the powers of your board under the order and under this proposed legislation, that would be extremely useful.

Mr. TOWERS: I have mentioned one case where the powers are greater, and we could prepare a memorandum in regard to the restrictions in powers as compared with the present order.

Hon. Mr. VIEN: As regards the appeal to the Exchequer Court, I have already mentioned that this does not seem to me to be of very great value. It may be, perhaps, in matters of long duration, but in an ordinary current operation an appeal to the Exchequer Court, to be settled in a year or two, is of no value.

Mr. TOWERS: I think, if I may say so, that it has this value: Take, for example, the provision that exports and imports shall be fair value transactions. It is clear that that fair value relates to the avoidance of transactions between two parties who have the same interest, at prices which are completely false. The knowledge that there is an appeal to the Exchequer Court would surely be a safeguard, because if the board tried to use that fair value clause to interfere with imports or exports where there was no reasonable ground for believing that there was collusion to bring about the export of capital, the aggrieved party could appeal to the Exchequer Court, which I am sure would throw out with a resounding bang any case where the board was going beyond its powers in trying to prevent collusion in matters of price so as to have the export of capital allowed.

Hon. Mr. VIEN: You think it would have that salutary effect?

Mr. TOWERS: Yes, I do. I hope that the salutary effect would not be necessary.

Hon. Mr. VIEN: In what particular would you be affected, beneficially or otherwise, if in place of the bill we continued for a period of, let us say, two years, the effect of the foreign exchange control order?

Mr. TOWERS: That is a question which was addressed to the Minister, and which he dealt with at some length. I really think it is a matter of government policy rather than of administration.

Hon. Mr. VIEN: It is coupled with the other one on which you are preparing a memorandum. If there were no Bretton Woods agreement, would you require this legislation?

Mr. TOWERS: The answer to that would depend on whether or not the absence of a Bretton Woods agreement affected government policy in regard to the stabilization of exchange rate. If the government policy was to allow the rate to fluctuate as it wished in accordance with forces in the market, with demand and supply, then the necessity for exchange control would not be so great. In those circumstances, that is where the rate is allowed to go where it wills, if a situation arises that a withdrawal of capital is threatening to take place and the rate goes to 20 or 30 per cent premium, as the case may be, that provides a brake on the export of capital. It also provides a brake on imports and a number of other things. In other words, if there is no responsibility for providing foreign currency at a stabilized rate, then the responsibility of trying to maintain a supply of foreign currency to fulfil one's commitments is lessened. The Canadian public, as well as the non-resident, then gets rationed in foreign currency in accordance with the dictates of the market.

Hon. Mr. VIEN: In the light of what you have just stated, do you visualize the perpetual necessity for such legislation?

Mr. TOWERS: The answer to that depends on the situation of Canada and of the world in general in the years to come. If there are perpetual upsets and disorganization, perpetual political troubles, perpetual recurrence of war and fright and movements of capital, then in such a world we are in for foreign exchange control and many other things, I am afraid, throughout our lifetime. I think that everyone is hoping that that is not the world we are going to live in; but I do not think that anyone—if you will forgive me for being platitudinous and making an obvious remark—I do not think that anyone can read newspaper articles these days and feel that we are out on the high plateau of peace and prosperity.

Hon. Mr. VIEN: What is the length of our Bretton Woods commitments?

Mr. TOWERS: Our Bretton Woods commitments can be withdrawn from, without notice, at any time.

Hon. Mr. VIEN: Therefore there is no fixed period in respect of our commitments?

Mr. TOWERS: None whatever. Any member of that organization can withdraw without notice at any time.

Hon. Mr. VIEN: So we are not committed for any definite period?

Mr. TOWERS: No.

Hon. Mr. VIEN: When the agreement was entered into at Bretton Woods did you immediately visualize that it implied this foreign exchange control to provide the stabilization that you have referred to?

Mr. TOWERS: Not necessarily so long as it was the policy to stabilize the rate. Then, unless and until world affairs settled down to a greater extent than one felt was probable, that foreign exchange control would be necessary. I do not know, but it might have been government policy to stabilize the rate, as was done during the war, whether or not there had been a Bretton Woods agreement; but of course when the Bretton Woods agreement came along a

commitment was taken to maintain a stabilized rate, that is, a rate which did not tend to fluctuate from day to day, so long as Canada was a member of that organization. But of course when it is in Canada's interest to do so, she can leave the organization without notice.

Hon. Mr. VIEN: But when did it occur to you or your advisers that a measure of this kind would become necessary?

Mr. TOWERS: It occurred in September 1939 speculatively, so to speak, it occurred much more forcibly in May of 1940, and it kept on occurring at times during the war as one saw its scope and the complete disorganization which it was causing.

Hon. Mr. VIEN: What I have in mind is this. If I recall correctly, when the Bretton Woods agreement was submitted to parliament there was no reference to that.

Hon. Mr. ABBOTT: If I may interject, I think the Minister of Finance stated so in 1945; it may have been before.

Hon. Mr. ROBERTSON: Section 4, page 20 of the Bretton Woods Monetary Conference deals with it.

Hon. Mr. ABBOTT: But the Minister of Finance stated in the session of 1945 that a continuance of foreign exchange control would be necessary.

Hon. Mr. VIEN: Of course, there was an obligation to stabilize exchange.

Hon. Mr. HOWARD: But not to control currency.

Hon. Mr. VIEN: It was to collaborate for the purpose of maintaining stability with other members and to avoid competitive exchange relations. That does not refer to the necessity of a piece of legislation of this kind.

Hon. Mr. ROBERTSON: There might have been at some other time.

Hon. Mr. VIEN: Yes.

Hon. Mr. ABBOTT: According to the memorandum I have here, it was in the session of 1945 that the government announced its intention to introduce legislation to put exchange control on a statutory basis, but the pressure of parliamentary business necessitated deferring it to the present session. In his speech in Toronto on the 1st of March of this year Mr. Ilsley referred to the matter again in more detail. After dealing with the international financial outlook and statement which had been made in the previous session he stated: "The government has come to the conclusion that the uncertainties in the world situation are such that the only prudent course to pursue is to continue foreign exchange control." That was last March, and, as I say, it had been previously announced in the session of 1945.

Hon. Mr. VIEN: But one would wonder why it could not have been part of the Bretton Woods legislation which was introduced last session.

Hon. Mr. ABBOTT: Because that legislation was simply to confirm an agreement entered into at Bretton Woods by the nations represented there. It took the usual form of legislation concerning an agreement, the agreement appearing as a schedule to the act.

Mr. Towers has pointed out to me that that was confirmed at the session of 1945, when the minister announced it had been intended to put foreign exchange control on a statutory basis, but that pressure of parliamentary business prevented it being done at that session, and it was brought on at this session.

Hon. Mr. McGEER: Can you get the record?

Hon. Mr. ABBOTT: I think I can.

Hon. Mr. VIEN: It was announced?

Hon. Mr. ABBOTT: Yes. I am advised it is in the Commons Hansard for the 1945 session.

Hon. Mr. VIEN: While the minister was out a minute ago I put a question to Mr. Towers, and he said he would prefer that the minister should give the answer. My question was this: In what particular would the continuation of the provisions of the foreign exchange order, if it were continued say for a period of two years, be embarrassing or insufficient for the purposes of the government?

Hon. Mr. ABBOTT: It would not be embarrassing or insufficient, senator. The measure under which the present foreign exchange control order exists is the War Measures Act, now the National Emergency Transitional Powers Act. That act, presumably, will lapse 60 days after the commencement of the next session, or about the end of March. If it lapses the present foreign exchange control order would lapse with it. As I stated this morning, I think when we were discussing this question, the government has had to review various measures dealt with by order in council under that extraordinary measure, and has had to decide which of those powers must be put in statutory form. This is one of the measures which the government decided would most certainly have to continue beyond the 31st of March next, and it was therefore decided to introduce it this session at as early a date as possible. Had pressure of parliamentary business permitted, it would have been introduced in the session of 1945. It is evident, I think, that there will be a very substantial volume of that work which will have to be introduced in the first days of next session; but in an endeavour to get some things behind us, things, as I said this morning, that we need, we decided we had better try to get on with them now. That is the reason which prompted the introduction of this bill.

Hon. Mr. VIEN: This is what I had in mind. Instead of this very elaborate legislation, which it is very difficult for us to study in detail and to appreciate in all its implications, it would be better to have a short bill to this effect: The provisions of the foreign exchange control order and the powers of the government to amend them from time to time are continued for a period of two years. Such a piece of legislation would guarantee to the government all the powers that it has now in respect to this matter.

Hon. Mr. ABBOTT: That would certainly be a simple way of handling it, Senator. However, I do not believe it would give parliament the power of inquiry which is given in the present bill, under which the government would have to come before parliament each year for an appropriation for the expenses of the board. And it would lack the rather elaborate provisions contained in the bill with respect to publicity as to the operations of the board, the reports which have to be filed, and the like. That is my personal opinion. While the bill may appear complicated, it in large measure introduces the provisions of the foreign exchange control order as it now exists, with a number of relaxations of those provisions, and with added provisions such as I have mentioned.

Hon. Mr. VIEN: What I have suggested could be regarded at least as a ceiling on the powers of the government to regulate foreign exchange for a period somewhat similar to what it has under the foreign exchange control order; but there is a definite reluctance to grant by way of legislation powers that are definite and permanent.

Hon. Mr. ABBOTT: That reluctance might be overcome by a time limit such as was discussed this morning. It would seem to me we could accomplish the same purpose as you have in mind by passing a blanket act confirming the regulations now in existence and empowering the government to continue the control as it sees fit under the very broad powers of the War Measures Act and the National Emergency Transitional Powers Act. However, I can only say

that this bill represents carefully considered government policy. Of course, the members of the Senate must accept their responsibility in this regard and do what they feel is proper in the interests of the people of this country.

Hon. Mr. VIEN: Personally, I would be in a better position to express an opinion on that particular point when we have the memorandum that Mr. Towers has promised to give us. I understand that it sets out clearly what are the differences between the control under the order and the control under this bill.

There is another question I should like to ask the minister. I understand a committee is to sit in Washington composed of representatives of Canada, the United States and the United Kingdom to implement the provisions of the loan agreements, and to discuss our trade relationships. Has anything been done in that direction?

Hon. Mr. ABBOTT: That may well be, Senator. I am not familiar with the arrangement, but I can make inquiries and find out.

Hon. Mr. VIEN: I want to find out if and when those representatives will meet in Washington.

The CHAIRMAN: Senator Buchanan?

Hon. Mr. BUCHANAN: My questions, Mr. Chairman, may be a repetition of some of the questions put by Senator Vien. My first question relates to this part of the preamble:—

And whereas it is desirable to provide means for achieving orderly exchange arrangements and in general discharging the obligations of Canada as a member of the International Monetary Fund.

Does our membership in the International Monetary Fund require us to pass legislation of this kind?

Mr. TOWERS: It requires us so long as we are a member of the Fund to maintain suitable exchange rates, and only to change them—to use the phraseology of the fund—in the event of a fundamental disequilibrium. I suggested earlier, as a personal opinion, that it would be very difficult for us to accept the commitments and maintain the stability of exchange rates in the present and prospective unsettled state of the world if we freely permitted the export of capital.

Hon. Mr. McGEER: Would you mind giving us the references to those sections?

The CHAIRMAN: May I remind you, Senator McGeer, that we have not yet disposed of Senator Buchanan's questions.

Hon. Mr. VIEN: Page 20, section 4.

Hon. Mr. BUCHANAN: My other question relates to an organization with which I am associated. We have a contract covering a period of years with an organization in the United States. Under that agreement we receive from them certain services, which we pay for in American funds. Would we be required to have a permit to make our payments?

Mr. TOWERS: The debtor in Canada when purchasing the funds would presumably advise the bank here that the money was in fulfilment of the obligation that you mention.

Hon. Mr. BUCHANAN: But they make their payments on a monthly basis. Would they have to have a permit each month?

Mr. TOWERS: I doubt whether there would have to be a form filled out in each case except for the bank itself.

Hon. Mr. BUCHANAN: Those are all the questions I have.

The CHAIRMAN: Senator Robertson? *

Hon. Mr. ROBERTSON: I should just like to ask Mr. Towers one question. I am in a little different position from that of the other members of the committee. As a member of the government I shall be called upon from time to time with other members of the government to pass on the regulations and so on, and of course shall have the freedom to exercise my judgment in respect to them. I think the point was first raised by Senator Crerar, but after all there are a great number of things which come up from time to time and it is not possible for an individual to go over them all. I should like to ask you, Mr. Towers, as Chairman of the board, this question: Is the spirit and the letter of this legislation designed definitely to maintain and increase the flow of international trade?

Mr. TOWERS: I would unhesitatingly say yes to that question.

Hon. Mr. ROBERTSON: I have no further questions.

Hon. Mr. BENCH: That question and answer usurps the function of this committee. It is a question that the committee should decide.

Hon. Mr. ROBERTSON: I was merely expressing my own opinion.

Mr. TOWERS: And I am expressing my opinion.

The Committee adjourned until Wednesday, August 21, at 10.30 a.m.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, August 21, 1946.

The Standing Committee on Banking and Commerce, to whom was referred Bill 195, an Act respecting the control of the acquisition and disposition of foreign currency and the control of transactions involving foreign currency or non-residents, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the chair.

The CHAIRMAN: Honourable members, I understand that Mr. Towers has a memorandum containing information requested yesterday by Senator Vien. Senator Vien is not here at the moment, but perhaps we should ask Mr. Towers to read the memorandum.

Mr. TOWERS: Mr. Chairman, Senator Vien asked for a memorandum indicating the differences between the powers now possessed by the board and those proposed in this bill. I have here a memorandum on restrictions on powers exercisable under the foreign exchange control bill as compared with the present orders in council. The memorandum reads as follows:—

Section 5(2) (c): Limits Exchange Fund's holdings of foreign currencies other than United States currency to amounts authorized by Governor in Council. Annual publication required under section 5(4). No limitation on amounts or requirements as to publication at present.

Section 7(2): Annual publication of advances to Exchange Fund Account required. No such requirements at present.

Section 8: Requires annual earnings of Exchange Fund to be paid to Consolidated Revenue Fund. At present earnings may be retained in Exchange Fund.

- Section 13: Requires annual appropriation by Parliament for costs of administration. At present all expenses may be paid out of Exchange Fund Account.
- Section 17: Authorized dealers' remuneration prescribed by Governor in Council. At present Board has power to prescribe.
- Section 18: Authorizes Governor in Council to prescribe rates of exchange. At present, rates are established on instructions of Minister of Finance.
- Section 25(2): Prohibits Board from withholding permit for export of goods where fair value to be received within six months in appropriate currency. No such limitation at present.
- Section 26(2): Prohibits Board from withholding permit for import of goods where payment not to exceed value and in appropriate currency. No such limitation at present.
- Section 30: Governor in Council may require residents to declare foreign securities. In original Foreign Exchange Control Order residents were required to declare foreign securities held as of September 15, 1939, and persons becoming residents thereafter are at present required to make similar declarations.
- In addition, at present Board has power to requisition foreign securities held by residents. No similar power in Bill.
- Section 35(3): Regulations of Board become effective only after approval by Governor in Council and publication in *Canada Gazette*. At present approval by Governor in Council is not required.
- Section 36(1) (d): Board may issue instructions only to authorized dealers and agents. At present instructions may be issued to any person and have the same force as regulations with respect to any person having notice of them.
- Section 37(2): With certain exceptions where appeal to a court is provided, appeal as of right from determination, decision or ruling of Board may be made to Minister of Finance. At present such appeals require permission of Board.
- Section 38: Provides appeal to Exchequer Court from determination of fair value by Board. At present no appeal except to Minister.
- Section 39: Board required to make annual report to Minister, which latter must publish in *Canada Gazette* and table in Parliament. No such requirement at present.
- Section 41(1): Only inspectors designated for the purpose may conduct inquiries under the section. At present any inspector appointed by Board may do so.
- Section 41(4): Provisions of Canada Evidence Act, except those relating to compellability of banks to produce records, apply to inquiries under the section. At present any information given by a person on an inquiry may be used as evidence against him in a prosecution.
- Section 41(6): Entitles a person who is examined in an inquiry to be represented by counsel. No such right at present.
- Section 41(8): No person may be arrested for offence under section 41 without a warrant. At present no warrant required.
- Section 42(4): Books or records seized by inspector must be returned within 90 days unless court proceedings commenced. No limit at present.
- Section 44(1): Approval of judge is required for entry and search of premises. At present Board or inspector may order search and detain persons or property.
- Section 45: Confines arrest without warrant to indictable offences which under section 60 are those involving property having a value exceeding \$1,000. At present arrest without warrant may be made for any offence.

Section 54: Limits liability of officers and agents of Board for acts done or omitted in the performance of their duties only where judge certifies they acted in probable cause or acted in good faith in carrying out instructions of Board. At present there is no right of action against such officers or agents for acts or omissions which he believed in good faith to have been required.

Section 60: Allows prosecution on indictment only for offences involving property of a value exceeding \$1,000. At present any offence may be prosecuted on indictment.

Section 62(6): Board is required at request of owner or claimant of currency seized as forfeited under this section to refer matter to court. At present such reference is discretionary with the Board.

Section 64(1): Limits commencement of forfeiture proceedings to 3 years from time cause of action arose. No limit at present.

Section 64(2): Limits detention of property seized and liable to forfeiture to 6 months unless proceedings commenced. No limit at present.

Section 64(3):: Permits release of property seized upon deposit of value in money. No such authority at present.

I have a memorandum on the new powers which I will now read:—

Section 5(2)(b): Permits moneys in Exchange Fund to be invested in any treasury bills or other obligations of the United States. At present the Exchange Fund Act limits such investments to those maturing in three months from acquisition.

Section 32: Contains general requirement with respect to services rendered by residents for non-residents. Similar section in Foreign Exchange Order exempts services performed in Canada for non-resident tourists. The intention is to cover this exemption by regulation under the Act.

I may say that in the drafting of the bill it was thought specific exports of that kind should be dealt with by regulation rather than in the act itself. This was a suggestion of the Department of Justice.

Section 34: Authorizes Board to require transfer to Canada of income or earnings of foreign subsidiaries of Canadian companies. No similar provision at present although Board now has powers, not contained in Bill, to requisition foreign securities.

Section 36(1)(c)(iii): Subject to appeal to Exchequer Court, authorizes Board to determine fair value. At present such authority is limited to transactions between related companies.

Yesterday in speaking of that fair value section I indicated that there was no intention of questioning values unless the board had reason to believe that there was a relationship between the two parties to the transaction. Certainly if it was thought that the section would be improved by restricting the power to determine fair value to dealings between related companies, that would not interfere with the administration and would in fact express the intention.

Section 60: Provides maximum fines for offences relating to property up to double the value of the property involved. At present maximum fine is \$5,000.

The CHAIRMAN: We may proceed now with cross-examination of the witness.

HON. MR. ROBERTSON: Mr. Chairman, at this stage I would like to ask a question on behalf of several senators who have requested me to do so. There has been a suggestion that the Foreign Exchange Control Board is contemplating the erection of a large building to house a very considerable staff; and this would seem to indicate two things: large operations by the board and more permanence than at least the members of the senate hope the board will have. I would like to know what the chairman of the board has to say in respect of that.

Mr. TOWERS: I may say the Foreign Exchange Control Board is not contemplating any building. The Bank of Canada is planning, when materials become more readily available, to build an extension to its building in order to bring back to the central point our staff who are now in a building on King Edward Avenue, and we will then sell the King Edward Avenue building. At the same time as we put up this addition it will be possible to house the staff of the Foreign Exchange Control Board, who in Ottawa number some 170, which total includes a fair number of Bank of Canada staff loaned to the board for the work they are now doing.

Hon. Mr. EULER: Are you making the building larger with that in mind?

Mr. TOWERS: No. When we build this extension we would have to leave some space for the future. We hope this is the last building to be put up; and I would say that as and when the Foreign Exchange Control staff is reduced that will give us room for expansion elsewhere.

Hon. Mr. ROBERTSON: Has that staff been reduced from its peak?

Mr. TOWERS: Its peak was 558, altogether through Canada. It is now a few over 200.

Hon. Mr. MORAUD: How many employees of the Bank of Canada are on loan to the Foreign Exchange Control Board just now?

Mr. TOWERS: At the end of 1945, fifty-six.

Hon. Mr. MORAUD: Out of one hundred and seventy?

Mr. TOWERS: Yes.

The CHAIRMAN: Let us come now to the main question, the bill itself. I will call on Senator McGeer. Have you any questions to ask, Senator?

Hon. Mr. McGEER: Mr. Towers, we meet again.

Some Hon. SENATORS: Oh! oh!

Hon. Mr. McGEER: You have the report of the Foreign Exchange Control Board for 1946?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Who prepared that?

Mr. TOWERS: Various people on the staff of the Board, and I made a few contributions myself.

Hon. Mr. McGEER: You are conversant with the contents, of course?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: You have been acting in the Foreign Exchange Control Board during the war as chairman, have you?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: What is Mr. Rasminsky's association with the Board?

Mr. TOWERS: He is alternate chairman. We divide up; I should say his proportion of time is higher than mine.

Hon. Mr. McGEER: But you have maintained contact with the Board?

Mr. TOWERS: Constantly.

Hon. Mr. McGEER: Will you please turn to page 39. That is your first year of operations. I notice that you had a total turn-over of \$16,000,000 odd.

Mr. TOWERS: That is the profit on turn-over.

Hon. Mr. McGEER: How much would the turn-over be?

Mr. TOWERS: The figures which I have here do not cover the period between September 16, 1939, to the end of December, but if I may refer to the 1940 figures, the purchases of United States dollars were \$731,000,000, and the sales were \$1,054,000,000.

Hon. Mr. McGEER: We will leave out sales, because your profits in the turn-over of exchange were \$17,000,000 net?

Mr. TOWERS: \$17,000,000 for 1940.

Hon. Mr. McGEER: We will just follow through on page 39. This was your revenue: From turn-over on foreign exchange \$16,000,000 odd; from transactions in gold, \$432,000 odd; from earnings on investments and foreign balances \$175,000 odd, making your total profit \$16,650,000 odd.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: You paid out of that, commissions on purchases and sales of foreign exchange \$4,223,000 odd.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Who were those paid to?

Mr. TOWERS: The chartered banks.

Hon. Mr. McGEER: And you paid interest on loans from the Dominion government of \$2,000,000 odd?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Have you the rate of interest you paid on those loans?

Mr. TOWERS: Yes, one per cent.

Hon. Mr. McGEER: And your general operating costs were \$1,500,000 odd?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: So your net profit was \$8,915,000 odd.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Now, that \$16,000,000 odd was a direct levy on the foreign exchange transactions of Canada was it not?

Mr. TOWERS: I should not call it that. I would call it a charge for performing a certain service.

Hon. Mr. McGEER: Do you think it was necessary at that time to impose such a charge? That after paying off these commissions of more than \$4,000,000, and interest to the government of \$2,000,000, and operating costs of \$1,503,000 you had a profit of \$8,900,000?

Mr. TOWERS: I would not describe that as profit, but as something to build up a reserve against a very serious risk of change in the rate—a risk, of course, which has since materialized, so the so-called profit has in fact disappeared.

Hon. Mr. McGEER: What you did on the operations show a net profit of \$8,900,000.

Mr. TOWERS: They show an amount available for reserve.

Hon. Mr. McGEER: But that was over and above the cost of your operations?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: So if it was not a tax on the people generally—as I suggest it was—we are that much better off, because that will be available to be held as a reserve, or go into the consolidated revenue fund?

Mr. TOWERS: To go into the consolidated revenue fund?

Hon. Mr. McGEER: The national consolidated revenue fund. If you accumulated a surplus which you did not need where would it go to? Would it not go to the government?

Mr. TOWERS: Under the provisions of the act it goes to a reserve account, but of course the provisions could have been changed and the amount paid into the government.

Hon. Mr. McGEER: Just the same as the operations of the Bank of Canada?

Mr. TOWERS: That could have been done, but in fact the legislation provided that any surplus over operating expenses should be put to reserve account.

Hon. Mr. McGEER: In 1941 your profit was \$9,265,000 odd?

Mr. TOWERS: The amount available for reserve, yes.

Hon. Mr. McGEER: And you paid in commissions \$3,893,000, in round figures?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And the interest paid the government rose to \$4,974,000.

Mr. TOWERS: Yes, because the holdings of foreign exchange required more financing from the government.

Hon. Mr. McGEER: Can you tell me what the money cost the government in 1940 and in 1941?

Mr. TOWERS: It is impossible to say what the particular financing cost the government unless one could identify the securities which were sold to provide the government with funds. But I may say that the rate which has been paid by the Board on loans from the Dominion government have approximated the rates paid by the government on deposit certificates.

Hon. Mr. McGEER: What was the rate of interest paid in 1940?

Mr. TOWERS: That was still one per cent. I have a memorandum here, Senator McGeer, in reply to your question of the other day. The rate was one per cent from the time the government first commenced making advances to April 30, 1945; then it was reduced to three-quarters of one per cent, which applied up to May 1st, 1946; since that time it has been five-eighths of one per cent. That is, five-eighths of one per cent is the present rate paid by the government on deposit certificates.

Hon. Mr. McGEER: In 1941 from your turn-over on foreign exchange you had \$16,256,000 in round figures, and your other revenue was from these other sources: transactions in gold, \$8,500; earnings on investments and foreign balances, \$3,227,000; profit on sale of investments, \$3,900. This gave you a total revenue of \$19,496,000. You paid out in commissions \$3,893,000; interest on loans, from the Dominion government, \$4,974,000; cost of coin shipments, \$10,000; general operating expenses, \$1,352,000. You had a profit that year of \$9,265,000.

Mr. TOWERS: I am sorry to be so technical—

Hon. Mr. McGEER: We won't quarrel with that; it was dealt with by Mr. Rasminsky as revenue profit when he appeared before the Commons Banking and Commerce Committee. Now, let us deal with 1942. This was your revenue: turn-over on foreign exchange, \$17,147,000—from transactions in gold, you lost \$65,000. How did that happen?

Mr. TOWERS: To be absolutely accurate, I ought to get a memorandum on that. We held the gold on our books at the New York price, less handling commission—which has to be paid there—less shipping charges based on shipments of moderate size. We bought a substantial amount of gold, as I recall, in that year at a slightly higher figure. What I am driving at is that this was a book loss, which was more than recovered in the following year when the gold was shipped. You will see that in 1943, the profit on our transactions in gold was \$263,000. The two years should be lumped together.

Hon. Mr. McGEER: You lost \$65,000 on gold transactions.

Mr. TOWERS: We did not lose it. It was a bookkeeping loss which was reversed in the following year.

Hon. Mr. McGEER: It is shown here as a loss.

Mr. TOWERS: A bookkeeping loss.

Hon. Mr. McGEER: But your explanation is that it was in shipping charges?

Mr. TOWERS: I have the detailed explanation here. In December, 1942, the United Kingdom sold an amount of gold to the Board to place itself in Canadian dollars to meet its requirements. This transaction, as with other exchange transactions between the Board and the Bank of England, was entered into at the made rate of exchange for United States dollars, namely, ten and a half per cent premium. The price at which gold is carried on the books of the exchange fund was based on the buying rate for United States funds, namely, ten per cent. The loss on gold transactions in 1942 was due to the writing down of the gold bought from the United Kingdom to the price at which gold is carried in the exchange fund account. In January, 1943, other methods were arranged for the financing of the United Kingdom requirements of Canadian dollars, as part of which the gold was resold to the United Kingdom at the made rate of exchange, resulting in the recovery of the book loss incurred in December, 1942.

Hon. Mr. McGEER: As a matter of fact you bought gold from the United Kingdom and then resold it for American dollars?

Mr. TOWERS: For American dollars.

Hon. Mr. McGEER: Why were you buying gold at that time?

Mr. TOWERS: They needed Canadian dollars in connection with their purchases here.

Hon. Mr. McGEER: That is the United Kingdom?

Mr. TOWERS: The United Kingdom.

Hon. Mr. McGEER: You then sold that gold back to the United Kingdom for American dollars?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: During that time were you selling gold to the United States right along? What were the gold reserves you had at that time?

Mr. TOWERS: Apparently the figures are not available; I shall have to get them.

Hon. Mr. McGEER: Would you get the figures?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Why are the figures of the amount of gold and U.S. dollars not kept separate?

Mr. TOWERS: They are separate, but I have not got them here.

Hon. Mr. McGEER: Why are they not presented to parliament as so much gold and so much U.S. dollars?

Mr. TOWERS: We regard the sum total as our effective reserve. If there is any interest in having gold separate from U.S. dollars it can be separated.

Hon. Mr. McGEER: The difference is that Canada is a gold producer but it does not produce U.S. dollars.

Mr. TOWERS: In the balance sheet of December 31, 1945, which you will find on page 45 of the report, gold is shown separately. The amount at that time was approximately \$388,000,000.

Hon. Mr. McGEER: That is for just one year.

Mr. TOWERS: For one year.

Hon. Mr. McGEER: The excess of revenue over expenditure transferred to the reserve fund was \$9,200,000 in 1942?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: You took \$17,000,000 out of the turnover on foreign exchange, plus \$65,000 in gold, and from earnings on certain investments \$3,000,000; plus the profit on the sale of investments of \$650,000, making a total

of \$20,000,000. You expended commissions to the chartered banks of \$4,000,000, interest on the loans \$3,000,000; the cost of temporary financing with the bank was \$387,000, and interest paid on retirement fund \$1,200. What is the retirement fund?

Mr. TOWERS: That is the fund similar to that which is maintained for those who are not under the superannuation fund. You will recall that particularly during the war temporary civil servants were required by reductions in salary to put something into a retirement fund and the government paid interest on that in the case of civil servants. We followed the same policy in the bank.

Hon. Mr. McGEER: That would indicate that as far back as 1942 there was some permanency to this institution?

Mr. TOWERS: On the contrary, that was the provision which the government introduced particularly for temporary wartime employees.

Hon. Mr. McGEER: The report shows the cost of coin shipments at \$11,000 and general operating cost of one million. How do you explain the differences in operating costs which are for the year ending December 31, 1940, \$1,503,000, for the year ending December 31, 1941, \$1,352,000 and for the year ending December 31, 1942, the cost had dropped to \$1,098,000?

Mr. TOWERS: The figures on page 46 of the report show the operating costs in detail. The board, after having reached the peak with a staff of nearly 500 in the early part of 1940 was able by simplified procedure and increased experience to reduce the number required.

Hon. Mr. McGEER: In 1939 you had only 355 employees and in 1940 you had 549.*

Mr. TOWERS: That is right.

Hon. Mr. McGEER: How do you explain that situation?

Mr. TOWERS: I would explain it by the fact that up to the end of December, 1939, and into the early days of 1940 we were in the process of putting together an organization which had consisted of no one as of September 13, 1939, and the staff in general was working until one, two, three and four o'clock in the morning, five nights a week. Had we not been able to get additional staff our employees would have broken down.

Hon. Mr. McGEER: And did you pay them overtime?

Mr. TOWERS: No.

Hon. Mr. McGEER: Then that did not account for your high operating cost of \$1,500,000?

Mr. TOWERS: The number of staff accounted for it in large measure.

Hon. Mr. McGEER: But you had fewer employees in 1940 than you had in 1939?

Mr. TOWERS: No; on the contrary, we had more.

Hon. Mr. McGEER: As I read the figures in 1939 you had 100 male and 255 female employees, making a total of 355; in 1940 you had 224 males, 325 females, with a total of 549.

Mr. TOWERS: Yes, we had more employees in 1940 than in 1939.

Hon. Mr. McGEER: Yes your operating costs in 1939 were \$1,500,000 and in 1941 were \$1,300,000.

Mr. TOWERS: I see now where the mistake arises. The statement for 1939 covers the period from September 15 of that year to December 31, 1940; whereas the figures on page 46 in the first column separates the figures for the few months of 1939 and the whole of 1940.

Hon. Mr. McGEER: What do you say that indicates?

Mr. TOWERS: That means that the report covers a period of fifteen and a half months, while the detail figures separate the costs for the calendar year of 1940.

Hon. Mr. McGEER: Your turnover for the year 1943 on foreign exchange was \$18,000,000, from transactions in gold \$263,000 and your earnings on investments was \$807,000, showing a total revenue of \$19,000,000. In that same year your commissions paid amounted to \$4,805,000; the interest paid the government was \$4,000,000 and the cost of temporary financing was \$71; the interest on retirement fund was \$1,200.

Hon. Mr. HAIG: Mr. Chairman, I do not like to interrupt anyone but this is developing into an investigation of the business of the board for the last five or six years. It may be very profitable and reasonable, but I do not think it has anything to do with the bill. Our reference is to inquire into the principles underlying the bill. I am quite satisfied to have the whole business of the foreign exchange referred to any committee which wants to deal with it, and I am quite willing if Senator McGeer should ask any questions he wishes in the house. He has the right to ask any questions about the bill or the principle underlying it. I really think we ought to stick to the bill and the question referred to us.

The CHAIRMAN: I agree with you, Senator Haig, that this lengthy procedure may not strictly relate to the bill, but, on the other hand, I know of no hard and fast rule to govern procedure in committees. For the time being I would permit Senator McGeer to continue.

Hon. Mr. McGEER: Mr. Chairman, I suggest that there are several principles involved in the bill and that the subject matter is not merely shall there or shall there not be exchange control, but shall those controls, whatever they may be, be exercised by the board designated in this bill.

The CHAIRMAN: I have given my ruling for the time being, and I ask you to proceed.

Hon. Mr. McGEER: When the bill was before the Committee on Banking and Commerce in the other place this general situation of the operation of the board was very fully discussed, was it not?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: As I remember it, the net proceeds from the Foreign Exchange Control Board operations totalled, for the period up to end of 1945, the sum of \$90,000,000.

Mr. TOWERS: Do you mean the accumulation of the excess of revenue over expenditures?

Hon. Mr. McGEER: No, I mean the total recovery from the various items that you set up.

Mr. TOWERS: Then you mean the gross earnings?

Hon. Mr. McGEER: Yes, the gross earnings.

Mr. TOWERS: I would have to figure it out from the various statements here. I should think however the gross earnings would be about \$109,000,000.

Hon. Mr. McGEER: May I just run over the figures for you; \$18,000,000, \$16,000,000, \$14,000,000, \$16,000,000, \$16,000,000, \$17,000,000, a total of \$98,000,000.

Mr. TOWERS: I think the gross earnings during those years amounted to about \$109,000,000, with interest and expenses paid amounting to about \$60,000,000, leaving an excess of revenue over expenditures of \$49,000,000 for the period of control up to December 31, 1945. That figure \$49,000,000 appears on page 45 of the report under the heading of Reserve Fund.

Hon. Mr. McGEER: The profits amounted to \$98,000,000.

Mr. TOWERS: And I think the gross earnings were \$109,000,000.

Hon. Mr. McGEER: Your excess of earnings over operating expenses were how much?

Mr. TOWERS: For the full period, \$49,000,000.

Hon. Mr. McGEER: Do you think that it was necessary to impose the levy on the foreign exchange transactions to accumulate that amount of money?

Mr. TOWERS: The rates for buying and selling were set by the Minister of Finance, no doubt after consultation with his colleagues, and therefore represent a matter of government policy.

Hon. Mr. McGEER: Are you not a colleague and adviser of the Minister of Finance on financial matters?

Mr. TOWERS: I would not set myself up as a colleague.

Hon. Mr. McGEER: There may be a difference of opinion on that; it is a question of whether you are above or below.

Mr. TOWERS: I know the answer to that: It is down rather than up. I am one of his various advisers.

Hon. Mr. McGEER: And I would say on matters concerning international exchange and banking transactions you would be the top flight adviser.

Mr. TOWERS: No, no. He has various advisers, and he makes up his own mind, after consultation with his colleagues.

Hon. Mr. McGEER: I thought you were the man on foreign exchange. Who are his financial advisers in addition to yourself?

Mr. TOWERS: He has many others.

Hon. Mr. McGEER: Who, that you know of? You say there are many others, so you must know.

Mr. TOWERS: On the staff of his department.

Hon. Mr. McGEER: We might want to examine them.

Mr. TOWERS: I think it is hardly necessary for me to say, because it is well known who the deputy minister and certain others of his staff are.

Hon. Mr. McGEER: You say they were responsible for fixing the rates?

Mr. TOWERS: No.

Hon. Mr. McGEER: That is not what you want this committee to believe?

Mr. TOWERS: No, I say that the Minister of Finance and the government determined the rate.

Hon. Mr. McGEER: The government with which you are associated as an adviser, and an employee of, fixes the rate?

Mr. TOWERS: The government fixes the rate, and the exchange board administers its operation.

Hon. Mr. McGEER: As administrator of the government's rates, as chairman of the Foreign Exchange Control Board, do you believe that it was necessary to impose a rate that exceeded that volume of profit from our international exchange operations?

Mr. TOWERS: I think I must still answer, Senator McGeer, that that is a matter of government policy, and if there is objection to it there are appropriate ways and means of signifying that objection to government. In the board we must carry out that policy as it is set down.

Hon. Mr. McGEER: You will agree that every dollar imposed upon exchange transactions is a levy on international business?

Mr. TOWERS: The costs of foreign exchange transactions are part of the cost of doing business, whether or not there is foreign exchange control. At times when exchange is completely stable the margin between buying and selling rates, particularly on large transactions, would of course be less than 1 per cent. At times when exchange is fluctuating all over the place the cost to exporters and importers may very well be in excess of 1 per cent. The question raised, as I understand it, is whether the 1 per cent was unnecessarily high—Was it too high a price to pay for stability? Was it wrong to build up reserves against possible losses? Those are questions which are matters of opinion and which relate to government policy. In fact, of course, at the time of revaluation on July 6 a writing-down was necessary. If the \$49,000,000 had not been there the net loss would have been just that much greater.

Hon. Mr. McGEER: I am coming to that. That is all the answer you want to give me on whether or not you think this was a proper rate?

Mr. TOWERS: That was a matter of government policy.

Hon. Mr. McGEER: As a matter of fact a great many of these transactions during that period were transactions which were part of our wartime production? There were a great many international transactions of people getting equipment and facilities across the line from the other side, on which this 1 per cent was imposed?

Mr. TOWERS: They paid 11 per cent.

Hon. Mr. McGEER: And that profit went to our chartered banks?

Mr. TOWERS: What profit?

Hon. Mr. McGEER: The 1 per cent.

Mr. TOWERS: No. The amount paid to them is shown here. That rate which they were paid was for some time one-eighth of 1 per cent on their purchases or sales of foreign exchange. Later on that rate was reduced to three-thirty-seconds of 1 per cent.

Hon. Mr. McGEER: Didn't they have power to handle cash? Didn't they handle American cash themselves?

Mr. TOWERS: On their till money transactions, that is actual U.S. currency which they held to be available for customers who were going down to the United States, on that portion of the business, which is small, they received the full spread; and of course they were taking the exchange risk on those holdings, and on July 6 suffered a loss of 10 per cent on what they held.

Hon. Mr. McGEER: So that the situation was this. Everybody who came into possession of American funds in this country, with the exception of the chartered banks, had to deliver it to the Foreign Exchange Control Board or its agents?

Mr. TOWERS: No exception to the chartered banks. They delivered to the Foreign Exchange Control Board all the exchange which they purchased.

Hon. Mr. McGEER: Then how did they have money in their tills on which they were running the risk?

Mr. TOWERS: With the exception of a few million dollars scattered between the banks in the form of actual U.S. currency.

Hon. Mr. McGEER: You see, your total profits were \$49,000,000, and the total commissions paid to the chartered banks were \$25,000,000?

Mr. TOWERS: About that, yes.

Hon. Mr. McGEER: It was not small business from the banks' point of view.

Mr. TOWERS: They did an enormous volume of work.

Hon. Mr. McGEER: In any event, you paid the banks \$25,000,000 during that time?

Mr. TOWERS: At the rate, first of all, of one-eighth of one per cent on the transactions, and later, three-thirty-seconds.

Hon. Mr. McGEER: You make that general statement. Could you get me the actual figure of the amount paid to the banks and the rate of commission paid each year?

Mr. TOWERS: Yes, I can give you that rate of commission. The amount paid to the banks is of course set forth in these various statements. They were paid one-eighth of one per cent on purchases and sales of exchange from the start of the control up to November 1, 1945. Since that date the rate has been three-thirty-seconds of one per cent.

Hon. Mr. McGEER: I am going to suggest to you that on those transactions on which you paid \$25,000,000, all that the banks did was purchase U.S. dollars and hand them over to you or take them on deposit and hand them over to you.

Mr. TOWERS: They purchase U.S. dollars from their customers and hand them over to us, they sell U.S. dollars for their customers and hand them over to us, and in the process they have a tremendous volume of work to do.

Hon. Mr. McGEER: In connection with that business?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: How?

Mr. TOWERS: They, for example, see to the making out of the statements showing the purposes for which exchange is bought or sold. They receive the forms which enable them to match sales of foreign exchange against import declarations. I could, if you like work out a memo which would recite at a very considerable length the details of all the work which they did. They are the ones who do most of the accounting work in connection with foreign exchange control.

Hon. Mr. McGEER: When a customer goes into a bank to get foreign exchange, the ordinary traveller who gets till money, that does not give work to the bank at all. That money comes out of the bank's till. That is part of the few million dollars that they have available all the time?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And on that they get one per cent?

Mr. TOWERS: That is right. And they have the expense of shipping the currency backwards and forwards, and the exchange risk of holding it.

Hon. Mr. McGEER: On the whole, judging from these figures, looking at it from a profit and loss point of view, the operations of the Foreign Exchange Control Board have been highly satisfactory.

Mr. TOWERS: I do not regard that \$49,000,000 as a profit, and it has not turned out to be. I think we have done the best we could; that is about all we can say.

Hon. Mr. McGEER: As a matter of fact, the net result of the operations to date is a loss of about \$90,000,000, is it not?

Mr. TOWERS: No. The figures in regard to the situation as of July 6 have not been disclosed. I think if those figures are desired that question should be addressed to the minister. I should imagine that if the committee were keen to receive them the minister would be glad to produce them, but he is the one who should do it.

Hon. Mr. McGEER: You say they have not been disclosed?

Mr. TOWERS: No.

Hon. Mr. McGEER: Well, if you will look at the figures—

Mr. TOWERS: When the matter was under discussion in the other committee an estimate was made on what the book loss would have been, based on the

foreign exchange and gold holdings as of December 31 last, which I may say would very closely approximate the actual loss as of July 6.

Hon. Mr. McGEER: I think that was the general assumption of the committee in the other place. Let us take a look at those figures. Before I come to them, may I ask: is there any reason why parliament and the people of Canada should not know the actual situation as it existed following the change in the exchange rate?

Mr. TOWERS: Naturally when the next board statement is published those figures will be given. I think that the minister took the view that as giving the actual figures of July 6 would disclose the position of the board at that time in respect of its foreign exchange holdings, and as it is desirable that those holdings should only be held after a certain time lag, that it would be better to delay the publication of the July 6 figures for a time. On the other hand, if there is a keen desire or a feeling that it is necessary to have them at this time, I think that point should be put up to the minister.

Hon. Mr. McGEER: It depends on what the committee wishes, but if I were a member of this committee I certainly would want to know all about it. I would like to have the information and I think the people of Canada are entitled to the information; and certainly parliament is. However, let us deal with it as far as we can, because we have got some of the information disclosed as to what the situation was on the 6th of July. If I have checked the figures rightly your losses on gold were \$35,000,000.

Mr. TOWERS: On the revaluation.

Hon. Mr. McGEER: Your gold was worth 10 per cent less?

Mr. TOWERS: The value of the gold was written down by 10 per cent, or \$35,000,000.

Hon. Mr. McGEER: And that was not the only loss taken. A loss swept throughout the whole gold mining industry of Canada, did it not?

Mr. TOWERS: Again we are on the question of very major policy, Senator McGeer, that is the change in the exchange rate, and I cannot express any opinion on that.

Hon. Mr. McGEER: I suppose the members of the committee know of the sweeping nature of that disastrous loss to the gold mining area in western Quebec. Certainly the members of the Senate know it, because it was brought out at an exhaustive inquiry by a Senate committee. I was on that committee, and it recommended that something should be done to help the gold mining producers, particularly in western Quebec, northern Ontario and British Columbia. Now, this loss swept all the way through the gold mining area.

The CHAIRMAN: Senator McGeer, in order that we may save time I must ask you not to indulge in any speech. Secondly, I would like to suggest that you follow as closely as possible the four points which it was decided by the committee, right at the start, that we should consider: (1) the need for control; (2) the need for action at this session; (3) the desirability of this form of control rather than other; and (4) the time limit, if any.

Hon. Mr. McGEER: I am dealing with the form of control. The question is whether the control should be given to the board or whether some other form of control should be set up. My whole objection to this programme, as you know from my speech in the Senate, is based on handing this power over to a board, which I say on its operations has shown a loss of \$90,000,000.

The CHAIRMAN: I do not want to invite you to make a speech.

Hon. Mr. McGEER: We come then, Mr. Towers, to your net loss on U.S. dollars, \$92,200,000. Now, what does that mean?

Mr. TOWERS: That means that the board was holding on its books approximately \$920,000,000 U.S. dollars, which it valued at 10 per cent premium. Writing those dollars down to par involved a write-down of \$90,000,000.

Hon. Mr. McGEER: You say "holding on its books". Did you have the dollars in your possession?

Mr. TOWERS: Yes, we owned \$920,000,000 in U.S. dollars.

Hon. Mr. McGEER: Those were not re-invested?

Mr. TOWERS: They were mostly invested in United States treasury bills.

Hon. Mr. McGEER: Did you get a profit on that?

Mr. TOWERS: We got the earnings on that which are shown in the statements from year to year.

Hon. Mr. McGEER: What were your earnings on those?

Mr. TOWERS: In 1945 the earnings on investments of foreign balances was \$2,655,000. That was practically entirely from United States treasury bills.

Hon. Mr. McGEER: How much of that \$920,000,000 did you have in cash and how much in investments?

Mr. TOWERS: We can pick it out in a moment. All we retained in cash is what you might call a reasonable working balance.

Hon. Mr. McGEER: And you lost \$750,000 on sterling?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: That made your total losses \$128,400,000 on those transactions.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: You lost another \$11,500,000 on being long on U.S. dollars?

Mr. TOWERS: That was our net position in respect to forward contracts.

Hon. Mr. McGEER: By forward contracts you mean you had contracts out at the time you made the change in the rate of the U.S. dollar?

Mr. TOWERS: Yes. In order to help exporters or importers the board had been willing from the commencement of control to provide protection either by the purchase or sale of U.S. dollars or sterling for future delivery. Ninety days was more or less the limit of the term at one time, although more recently, where exporters or importers could show that they had longer term contract prices, longer protection was provided. That form of protection, as you know, was available to exporters and importers before control through the ordinary operations of the banking system, and therefore was a service which it was thought the board should provide.

Hon. Mr. McGEER: With \$920,000,000 in U.S. dollars in your possession at that time why were you buying more?

Mr. TOWERS: We were buying U.S. dollars for future delivery at the request of the Canadian exporters in order to provide them with the protection which they could have obtained in the ordinary money market before control.

Hon. Mr. McGEER: Why did you not use the sum of \$920,000,000 that you had at that time?

Mr. TOWERS: I do not think that is the point. We had the \$920,000,000, but the exporter comes along and says "I have a contract which will result in my receiving \$100,000 in U.S. dollars 90 days from now. Will you contract to buy that from me at the current rate, say 10 per cent?"

Hon. Mr. McGEER: But that was a standing offer to everybody. No one had to make a contract with you to take over American dollars that were coming to him, because your law said the recipient of those dollars had to deliver them to you.

Mr. TOWERS: The contract of course fixed the rate and was a protection to the exporter or to the importer, as the case might be.

Hon. Mr. McGEER: As I understand the Foreign Exchange Control Board regulations, everybody who came into possession of U.S. dollars had to turn them over.

Mr. TOWERS: We would buy them at the rate that day if there was no future contract in existence.

Hon. Mr. McGEER: The rate was stabilized then at 10 per cent in and 11 per cent out.

Mr. TOWERS: The rates up to July 6 were the ones you have mentioned; then they were changed.

Hon. Mr. McGEER: But you changed them.

Mr. TOWERS: The government changed them.

Hon. Mr. McGEER: On your advice.

Mr. TOWERS: The government gets advice from many sources.

Some Hon. SENATORS: Oh, oh!

Hon. Mr. McGEER: This is no laughing matter to hundreds of thousands of Canadians. That brings your total loss on that transaction to \$139,900,000?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And your net revenue over and above operating expenses was \$49,000,000?

Mr. TOWERS: And the capital reserve, which you will realize grows by the upward revaluation of our holdings—that is the reverse of the recent situation—was some \$84,000,000.

Hon. Mr. McGEER: Where did the \$84,000,000 come from?

Mr. TOWERS: It came from the upward revaluation of the Bank of Canada gold holdings from \$20.67 to \$35 an ounce.

Hon. Mr. McGEER: That was in 1935, before the Foreign Exchange Control Board ever came into existence?

Mr. TOWERS: Yes, that is right. That was in the exchange fund account, and this is really a statement of the exchange fund account.

Hon. Mr. McGEER: But surely you do not wish this committee to believe that because Roosevelt raised the price of gold from \$20.67 to \$35 an ounce, and the Bank of Canada gold reserves were thereby increased, that should be offset against losses made by a board that did not come into existence until 1939?

Mr. TOWERS: The exchange fund account was in existence all along, and in 1939 the Foreign Exchange Control Board, by direction of the Minister of Finance, was authorized to operate the exchange fund account.

Hon. Mr. McGEER: What I am dealing with, Mr. Towers, is the operations of the Foreign Exchange Control Board since 1939. Now, I ask you if it is not fair to state that in the operations of the Foreign Exchange Control Board since it came into being in 1939 to date, the losses made by that board are \$90,000,000?

Mr. TOWERS: It is not the loss made by the board in the sense in which I think you imply. It is a loss, if you like, incurred through the governmental stabilization programme of exchange during the war, and arising from the governmental decision of change in rate.

Hon. Mr. McGEER: But it does not matter what the situation was. We now are financing a Foreign Exchange Control Board—

Mr. TOWERS: And exchange fund. Call the two the same thing.

Hon. Mr. McGEER: —and we find out that at the end of five years its net losses are \$90,000,000.

Mr. Towers: And that the earlier profits after revaluation upwards were \$83,000,000.

Hon. Mr. McGEER: If you want this committee to say that because the Roosevelt revaluation of gold back in 1935 gave us an increase in the value of our gold in Canada, and that that should be set off against losses of the Foreign Exchange Control Board, then I am perfectly willing to leave it at that.

Now, Mr. Towers, I want to come back to the bill for a few moments. Do you really think that it is necessary for the Foreign Exchange Control Board to take control over transactions as low as \$100 to protect the exchange value of Canadian currency?

Hon. Mr. EULER: You said a moment ago that the basis of buying and selling American exchange was 10 per cent and 11 per cent. Did you not later change that to 10½ per cent?

Mr. TOWERS: Yes, that is true. I understood Senator McGeer was referring to the earlier rate. That was changed by buying at 10 per cent and selling at 10½ per cent after the end of the war to reduce the spread, and the present spread is one-half of one per cent. It was changed in October, 1945.

Hon. Mr. McGEER: Do you really think that section 62 is necessary to protect our international position?

Mr. TOWERS: That section provides for a summary procedure for the forfeiture of Canadian foreign currency dealt with contrary to the act if the value does not exceed \$100. The object there is to avoid proceeding before a court, which involves expense and time for all concerned. In offences covering amounts up to \$100 the penalty following prosecution is generally too drastic, and then there is the cost entailed. In some of these cases the offence is due to ignorance or carelessness and while forfeiture is not justified the use of this procedure enables the board to deal with the offender in a formal way without expense to him and where justified, release the fund. There is a similar procedure in sections 172 to 179 of the Customs Act relating to seizures of goods.

Hon. Mr. McGEER: Do you think yourself that it is necessary to have that rigid power over an amount of \$100 to protect our currency?

Mr. TOWERS: I think there are two questions to be considered. One is, whether the board should scrutinize, supervise and control, if you like, small purchases or sales of foreign exchange. I do not see how it is possible to say that the board shall have no supervision over small purchases of exchange and at the same time have any control, because large amounts can go out through a multitude of small transactions. That is quite different from section 62, which tries to simplify the procedure in connection with the relatively unimportant infractions of the act.

Hon. Mr. McGEER: You know that in our Customs Act parliament has provided that Canadians going to the United States for a short visit can bring back free of duty goods to the value of \$100; and there is a reciprocal arrangement on the part of the United States?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: You know why that was done, don't you?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: You know that along a large section of the boundary line, particularly in New Brunswick and Quebec, Canadians and Americans go to and fro all the time as though there were no boundary line at all; so it is

between Detroit and Windsor, and to a lesser extent on the prairies and in British Columbia. That concession was made, as you know, to increase the flow of tourist trade.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Do you know that in the province of New Brunswick your board prosecuted a farmer who walked across the boundary line with a hundred dollars in his pocket and knew nothing of the regulations; the hundred dollars was confiscated and he was fined fifteen dollars? He appealed the case before one of the county judges in New Brunswick who said the man had committed no offence, and threw the case out. The board sought to take the appeal to the Supreme Court of Canada, and finding there was no provision for appeal an order in council was passed providing for such. Did you know that had happened?

Mr. TOWERS: I do not think I need ask for the person's name. I think we can get the facts of that case, and I believe they are not as they have been reported to you.

Hon. Mr. McGEER: In what particular are they not the same? I will call Mr. Hatfield, who is the member for that district and he will give us the facts.

Mr. TOWERS: I think it would be better to investigate the facts.

Hon. Mr. McGEER: Did you not get an order in council providing for an appeal to the Supreme Court of Canada?

Mr. TOWERS: No.

Hon. Mr. McGEER: Do you think that form of persecution—

Mr. TOWERS: Could we not wait until we know the facts of this case before assuming that a persecution has taken place?

Hon. Mr. McGEER: Do you not see in this kind of legislation the danger of such persecution?

Mr. TOWERS: Through maladministration that possibility always exists.

Hon. Mr. McGEER: No, through over-zealous administration; through dutiful administration.

Mr. TOWERS: I would hope not, but in any event, as I said the other day, I would be the last man to say that foreign exchange control is desirable in itself; but, if there is to be foreign exchange control it is necessary to administer it in a way that large numbers of people cannot disregard it. If they do the thing falls into disrepute and an honest individual who would not wish to commit an infraction of the act, if he sees that large numbers of people are getting away with those things because of the lack of supervision of control, he will soon decide to do the same thing himself. It seems to me that the major question is whether in the national interests of Canada control is essential; if it is essential, that is unfortunate from my point of view.

Hon. Mr. McGEER: You will agree, will you not, that the laws should be obeyed?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And that the laws should be enforced?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And when parliament enacts a law it is the duty of the officials administering it to enforce it impartially against everyone?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: So that once this parliament puts a law on the statutes, whatever that law may be, the duty of those administering it is to enforce it.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: May I cite another case from the province of New Brunswick? A woman came to the bank to pay a note of \$300; the bank was not open. She met her daughter who suggested that they go across the boundary line to visit some relatives and return later to the bank. They drove to the border crossing, one of your foreign exchange control board inspectors asked if they had any money and she explained what she had and why she had it. The money was confiscated, and afterwards complaints were made from New Brunswick and the Foreign Exchange Control Board took the \$300 and paid the woman's note at the bank.

Mr. TOWERS: That case was brought up before, but we were not given the name, and we cannot locate it.

Hon. Mr. McGEER: I will bring Mr. Hatfield here and he will put those facts before the committee.

Mr. TOWERS: At the same time as giving the facts could we not be given the name?

Hon. Mr. McGEER: I will get the name for you.

Mr. TOWERS: In that case we will be able to get down to brass tacks.

Hon. Mr. McGEER: You still say that the situation is going to be so dangerous over the next two years that you must have the power to prevent people from carrying out the legal provisions of our Customs Act, namely to move freely back and forth across the border exchange amounts up to \$100?

Mr. TOWERS: I do not follow that there is legal provision in the Customs Act to that effect.

Hon. Mr. McGEER: I am suggesting to you that that is one of the increased powers that this bill gives to the board, and which it did not previously have.

Mr. TOWERS: In any event the people can obtain any funds they want for the purchase of American goods, whether they come under the \$100 exemption or not.

Hon. Mr. McGEER: Did you not have, by reason of your Foreign Exchange Control Board, regulations giving power over temporary visitors?

Mr. TOWERS: Which power is that?

Hon. Mr. McGEER: The power to interfere with all persons going back and forth across the boundary line.

Mr. TOWERS: I do not know that we interfered with them.

Hon. Mr. McGEER: But you have the power to interfere with them under this bill?

Mr. TOWERS: There are certain provisions which say that foreign exchange should not be purchased without a permit, yes.

Hon. Mr. McGEER: I am reading from section 25(3) of your Foreign Exchange Control Order, P.C. 7387, which is as follows:—

Nothing in this section shall be construed so as to affect in any way any temporary visitor to Canada who is a non-resident, other than a resident of Newfoundland or of the sterling area.

Mr. TOWERS: I mentioned that this morning at the commencement of the discussion, and said that the Department of Justice advised against putting that exemption provision into the act itself; it was suggested that exemptions be made by regulations which would be approved by Governor in Council.

Hon. Mr. McGEER: Mr. Towers, I would like awfully well to have the Director of the Travel Bureau here, but he is not in the city. I fear that you are doing, probably unconsciously, our tourist trade a tremendous injustice by this bill.

Mr. TOWERS: I must say, Senator McGeer, that I cannot see any interference with tourists or anything which would hinder that trade. Because the board is interested in the foreign exchange position we are naturally concerned and want more and not fewer tourists.

Hon. Mr. McGEER: I do not suppose you have, in your wide experience, become conversant with the tourist trade?

Mr. TOWERS: I should think I am reasonably so.

Hon. Mr. McGEER: If you are conversant with it, you know that the maritime provinces and the province of Quebec compete for tourist trade with the state of Maine, and with the northern states of New Hampshire, Vermont and northern New York, and that the competition is keen. You also know, no doubt—if you know anything about the tourist trade at all—that the state of Maine is the most highly developed tourist state in the United States of America.

Mr. TOWERS: Although its attractions are not nearly as great as those of the provinces you mentioned.

Hon. Mr. McGEER: Let me speak of my own section of the country. You know that British Columbia competes with Alaska, and also competes with Washington, Oregon and Northern California.

Mr. TOWERS: I believe this year it is competing very successfully.

Hon. Mr. McGEER: I am not so sure about that, but I can tell you that the tourist accommodation in Sierra Nevada is much greater, more efficient and attractive than is the tourist accommodation in the Rockies and Selkirks around the coast. The competition is active and keen, and the tourist organizations in the United States are steadily advocating "See Your Own America First", and some of them are very bitterly opposed to American tourists travelling in Canada. Do you know that that situation exists?

Mr. TOWERS: I know there is competition but I do not know how vicious it is.

Hon. Mr. McGEER: Let me put this proposition to you: in the hands of a competitor of ours who is bitterly opposed to the tourist trade coming to Canada, legislation of this kind could be used very effectively against the trade. Any lawyer reading section 62 could very well advise that a tourist coming to Canada would be liable to be put in jail and have his hundred dollars confiscated.

Mr. TOWERS: I have enough confidence in the good sense of the American people to think they would say that is a yarn.

Hon. Mr. McGEER: I should like you to look at section 45 at page 23 of the bill which reads:—

Any officer may arrest without warrant anyone found committing or who he on reasonable grounds suspects of having committed any offence under this act may be prosecuted upon indictment.

Mr. TOWERS: That is right; it authorizes arrest without warrant for offences under the act which may be prosecuted upon indictment. That provision is necessary since any such offences relate to persons who are about to leave Canada, and there is no opportunity to obtain a warrant in the usual way. Under section 60 of the bill the offences which may be prosecuted upon indictment are those in relation to property having the value of more than \$1,000.

Hon. Mr. McGEER: Then may we look at section 46 which reads:—

No customs officer shall permit the export or import of any property through any port or place over which he has authority unless he is satisfied that no permit is required for such export or import or that the requisite permit has been obtained.

In what position are you putting the customs officer? How is he going to do that?

Mr. TOWERS: I should say that he is to use his common sense.

Hon. Mr. McGEER: Let us look at section 47, which reads:—

No postmaster shall permit the export by post of any letter, parcel, package or other article which contains or which he suspects contains any property for the export of which a permit is required under this act unless he is satisfied that the requisite permit has been obtained.

Is the postmaster to open every parcel, package and letter?

Mr. TOWERS: No, they are not, but they may on occasion have reason to believe that securities or currency are being exported. May I say as the matter now stands the postal censorship is such that the postmaster may not be entitled to open a piece of mail, but where he suspects that the contents may be securities he is entitled to refer it back to the censor.

Hon. Mr. McGEER: Do you think those extraordinary powers are necessary to protect us in connection with our relations between Canada and the United States?

Mr. TOWERS: Our relations with all countries, perhaps, would be a better way of putting it, although the United States is the most important factor. The necessity for foreign exchange control has been explained by the Minister of Finance in outlining government policy. Then yesterday, while it is not my job to speak about policy, I did indicate what I thought the situation was likely to be over the next few years, that it was a very dangerous one so far as Canada is concerned if export of capital was freely permitted.

Hon. Mr. McGEER: I am not dealing with export of capital freely permitted. I am dealing with the tourist trade of Canada.

Mr. TOWERS: It will not be interfered with in any way, shape or form.

Hon. Mr. McGEER: Let us look at section 48 of the bill. It says "Every person"—that includes all the tourists. It says:—

Every person who is about to leave Canada shall, immediately before leaving Canada, present himself before a customs officer and shall truly answer all questions asked of him by the said officer relating to property which he is taking or proposes to take with him out of Canada, and the said officer may question him with reference thereto.

The next subsection goes on to say that if the officer has reasonable cause to believe that the person has any property concealed upon his person, the officer may search him. What do you think that legislation is going to do to our tourist trade?

Mr. TOWERS: You will find many formidable provisions in the Customs Act, Senator McGeer, but the customs officers use their heads. You will find that non-residents are not bothered by those provisions, unless the customs officer has reason to suspect that they are taking out unauthorized currency or securities.

Hon. Mr. McGEER: That is your answer on that?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And you still say that our situation is going to be so bad over the next two years that we must take these extraordinary powers and place everybody under the supervision of you and your inspectors?

Mr. TOWERS: I say this, that if the government and parliament decide that foreign exchange control is necessary, then the administration of that control, if it is not to be completely shot to pieces, does require the powers which are set forth here. I also realize that there is a great responsibility so to administer them that while persons who are deliberately trying to evade the law are picked up, innocent persons are not bothered.

Hon. Mr. McGEER: In other words, whereas under the Customs Act parliament decided on a policy to improve tourist trade and international relations between Canada and the United States by permitting freedom of movement up to \$100, you want to supervise that?

Mr. TOWERS: Freedom from duty?

Hon. Mr. McGEER: You could go across the line and buy \$100 worth of goods and bring it in here duty free.

Mr. TOWERS: A person had to stay over there 48 hours, and not go oftener than three times a year, as I recall. But in any event, Canadians who wish to obtain \$100 or \$10,000, or \$100,000 may do so at the present time.

The CHAIRMAN: May I suggest, Senator McGeer, that the point you are making has been more than fully covered. I could give the answer of the witness to many of your questions, because he has already given it many times.

Hon. Mr. McGEER: I have been present throughout the sittings of this committee and I have never heard sections 45, 46, 47 and 48 dealt with before.

The CHAIRMAN: The answer to those questions you are asking has been repeatedly given.

Hon. Mr. McGEER: I thought I was dealing with sections that had not been dealt with before.

The CHAIRMAN: I do not want to curb your cross-examination, but perhaps you might cover all the objectionable sections in the one question and get an answer from the witness.

Hon. Mr. McGEER: I think these four sections are very important. The most important thing in Canada today is the development of our tourist trade. Now I will come to section 36.

Mr. TOWERS: Speaking of the tourist trade, during the periods when exchange rates were fluctuating—and there were various such periods in Canada between the two wars—one of the most damaging things was the fact that tourists never knew what a store or a merchant would pay for United States currency. In some cases tourists were deliberately gypped. Innumerable complaints were received from tourists and a lot of ill will was caused on that ground. Since September, 1939, however, tourists have known just what their money was worth in Canada. One of the results of this control has been to ensure to tourists that they got a square deal on their currency. I have every reason to believe that that has been advantageous and appreciated.

Hon. Mr. McGEER: That was when the 10 per cent was on?

Mr. TOWERS: Yes. I say that stability of rates is advantageous in connection with the tourist business.

Hon. Mr. McGEER: You still demand the recovery of all American dollars?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Then why are American dollars circulating everywhere today? I have had several of them handed to me. They are now being circulated as if they were free currency.

Mr. TOWERS: That is true. The fact that the rate has come to par has meant that people are slower in turning in the American dollars to the bank. They will reach there in due course.

Hon. Mr. McGEER: Everybody in the country is committing an offence today. People are already beginning to disregard these regulations. I have had American money handed to me on four or five occasions, and on each occasion I have said, "You cannot deal with that; you have to turn that in to the bank." And I have been told, "Why, it is at par." If you still force everybody to turn over their American exchange to you, there will not be any difference between what happens now and what happened before.

Mr. TOWERS: I do not quite follow that. I do not see its effect on the subject of tourists.

Hon. Mr. McGEER: You are telling me that foreign exchange control stabilizes the unofficial market which you spoke of before.

Mr. TOWERS: No, it had nothing to do with the unofficial market.

Hon. Mr. McGEER: Was it not the unofficial market that caused the gypping and bad feeling you spoke of as having been created in pre-war days?

Mr. TOWERS: No; it was the fluctuating rate.

Hon. Mr. McGEER: According to the chart in your 1946 report the rate did not fluctuate very much. There were four years when there was instability, 1920 and 1921, 1932 and 1933. There was stability from 1922 to 1932, from 1933 to 1940, and from 1940 to 1945?

Mr. TOWERS: Yes. I simply referred to the fact—it is not a terribly important one—that in the five or six years between the two wars when the rate was fluctuating violently it caused many complaints by tourists, and therefore from that point of view stabilized rates are a good thing for the tourist trade.

Hon. Mr. McGEER: But anybody who will look at this chart will see that in sixteen out of the nineteen pre-war years—a period which included boom times and depressions—the Canadian dollar, without control, stabilized itself with the American dollar, and was only out of line in four years, and they were years of violent disturbance, 1920 and 1921, and 1932 and 1933.

Mr. TOWERS: I would say it was doing a fair amount of fluctuation in about five of the years.

Hon. Mr. McGEER: In one of those years it fluctuated up. Between 1934 and 1935 it went higher than it ever dropped in that period. Is that right?

Mr. TOWERS: I did not follow that question.

Hon. Mr. McGEER: If you look at the chart you will see that in 1922 and 1923 it dropped a little, I would say probably down to 91, and in 1934-35 it rose to slightly more than that?

Mr. TOWERS: It rose to about 103 at one point.

Hon. Mr. McGEER: And it dropped to about 92.

Mr. TOWERS: It dropped in 1932—

Hon. Mr. McGEER: No; I am talking about the twenty-year period. In 1922-23 it dropped 2 or 3 per cent?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And in 1934-35 it rose 2 or 3 per cent.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Otherwise it was practically stable all the way through?

Mr. TOWERS: Except for two periods when it was very unstable.

Hon. Mr. McGEER: We have dealt with those two periods. During the twenty years from 1920 to 1940, with the exception of four years—those two terms of major disturbance—the Canadian dollar stabilized itself at par with the American dollar, without controls?

Mr. TOWERS: In other words, it fluctuated violently in each period of crisis, but was stable in between crises.

Hon. Mr. McGEER: I would like to get this clearly on the record. I can state it and ask you if I have not stated it correctly. In the period 1920 to 1921 Canadian exchange fell below the dollar rate, down to 88?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: It rose to par in 1921-22 and fell to 98 in 1923-24?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: It stabilized itself between 1923-24 and continued stable, with very minor deviations, until 1932?

Mr. TOWERS: September 1931. That was the time England went off the gold standard.

Hon. Mr. McGEER: Until towards the end of 1931?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Then it commenced to fall, and fell to 72?

Mr. TOWERS: No; say 82.

Hon. Mr. McGEER: It rose again to par in 1933 and it registered above par in 1934, at 102?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And then stabilized itself until 1939?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: It fell in 1939 to 91, did it?

Mr. TOWERS: 90·9, which is equivalent to the premium of 10 percent.

Hon. Mr. McGEER: And was stabilized at that figure until 1946, July 5?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: When the Canadian government, acting on high financial policy, decided to change the rate and make it par, is that right?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And since then it has fallen on the New York market by six points?

Mr. TOWERS: You are referring to the unofficial market in New York, which consists of transactions between non-residents, in which the Canadian government does not intervene?

Hon. Mr. McGEER: Yes. It has fallen on the unofficial market in New York by how many points?

Mr. TOWERS: It was at 10 per cent discount in the unofficial market. The last figure I saw was 3 per cent. That was some days ago.

Hon. Mr. McGEER: There was an unofficial market during 1939 and 1940?

Mr. TOWERS: There has been all through the war.

Hon. Mr. McGEER: Did the rate vary any from the 10 per cent?

Mr. TOWERS: I cannot give you accurately its low figure, which was probably sometime in 1940, but speaking from memory it would be about a 25 per cent discount, which would be the equivalent of a 35 per cent premium on United States funds here. At that time dominion bonds were selling in New York at 60 cents on the dollar.

Hon. Mr. McGEER: Looking at that chart, outside of very violent disturbances, we do not need foreign exchange control to ensure reasonable stability of the buying power of the Canadian dollar in relation to the American dollar, do we?

Mr. TOWERS: During a period of great confidence that has been our experience in the past, although on some occasions it has only been possible by reason of the fact that very substantial borrowing took place in the United States. For example, you will notice in that chart there was a certain disturbance in the rate around 1929. You will recall that late in 1929 there were some pretty serious stock market crashes.

Hon. Mr. McGEER: The worst crash in history was precipitated by the bankers of New York: you know that?

Mr. TOWERS: Well, because of the reference to New York I am tempted—but I must disagree. Many Canadians were involved in the New York

crash, very substantial losses were incurred, and a lot of money had to be remitted to buttress up their accounts between 1929 and 1930. It is interesting to observe that our net new issues of securities—practically all in New York—which had been \$39,000,000 in 1928 rose to \$176,000,000 in 1929, and to \$323,000,000 in 1930. That explains why, in spite of the strain of the times, the exchange rate did manage to keep fairly stable throughout until 1931. We were going into debt in a big way.

Hon. Mr. McGEER: You have learned how to go into debt in a much bigger way since then, though.

Mr. TOWERS: Not in the United States.

Hon. Mr. McGEER: Now, Mr. Towers, if you were sure that you would have a sufficiency of gold and United States dollars over the next two years, would you think this kind of control legislation would be necessary?

Mr. TOWERS: I think one would have to be sure for a longer period than two years.

Hon. Mr. McGEER: All right, say five years.

Mr. TOWERS: Absolutely.

Hon. Mr. McGEER: If you were sure you could have in your possession in the Bank of Canada adequate reserves of gold and United States dollars over the next five years you would not require this control legislation?

Mr. TOWERS: No—

Hon. Mr. McGEER: Thank you.

Mr. TOWERS: That is, with adequate reserves to enable foreign currency to be freely available for trade purposes.

Hon. Mr. McGEER: I asked you for the figures as to how much gold and United States dollars you had in the years 1920 to 1939. Have you got those?

Mr. TOWERS: The figures which it is possible to get do not give a true picture of Canada's foreign exchange position at that time; but I have here all the information which is available.

Hon. Mr. McGEER: Thank you.

Mr. TOWERS: Shall I read it out? It is pretty confusing to read all these figures.

Hon. Mr. McGEER: These gentlemen are all experienced business men, you know.

Mr. TOWERS: Instead of reading all the years, shall I pick one which you may care to choose?

Hon. Mr. McGEER: 1920.

Mr. TOWERS: The Dominion government held \$101,000,000 of gold, valued at \$20.67 an ounce.

Hon. Mr. McGEER: \$101,000,000?

Mr. TOWERS: Yes, at the \$20.67 value. The chartered banks held \$82,700,000, which included subsidiary accounts. I would say their gold holdings were \$72,000,000, some of which might pertain to foreign business. Between the two, that is the Dominion government and the chartered banks, the total gold holdings were \$173,000,000 valued at \$20.67. It must be remembered of course that the banks also held certain United States dollars at that time for Canadian accounts, and that private concerns also had balances in United States dollars. That is why I say it is difficult to compare these figures with the present ones, which, apart from some foreign operating accounts, have centralized all gold and United States dollars in one hand.

Hon. Mr. McGEER: And of course in those days there was danger, in that gold was freely exportable, anybody who wanted to take it to the United States or any other place could do so.

Mr. TOWERS: I did not understand we were on the gold standard at that time.

Hon. Mr. McGEER: In 1920?

Mr. TOWERS: No.

Hon. Mr. McGEER: If I had gold I could at that time take it to China, England, Ireland, France—anywhere; there was no restriction on the export of gold.

Mr. TOWERS: If you had it personally, but you could not extract any of that gold from the government.

Hon. Mr. McGEER: No. But you are telling me that in 1920 the government had \$101,000,000 worth of gold; no United States dollars?

Mr. TOWERS: It may have had a few.

Hon. Mr. McGEER: That whatever United States dollars were held here were in the possession of the chartered banks?

Mr. TOWERS: Yes, or private companies or individuals.

Hon. Mr. McGEER: While whatever gold there was, was either in possession of the banks or private individuals.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: So that the only reserve we had in Canada, controllable by the government, was \$101,000,000 of gold.

Mr. TOWERS: That is why it would have been completely impossible for the government to consider the stabilizing of the exchange rate. It had to let the rate go where the market took it.

Hon. Mr. McGEER: Gold and United States dollars in the possession of the chartered banks and private people could move freely out of Canada without any sort of restrictions.

Mr. TOWERS: Yes, deposits in the banks could move freely out of Canada if their owners were willing to pay the price of United States funds.

Hon. Mr. McGEER: There was absolutely no control?

Mr. TOWERS: It was a free-for all.

Hon. Mr. McGEER: In 1920 with the depression disaster came and our Canadian dollar dropped to what, 88?

Mr. TOWERS: About 87 or 88.

Hon. Mr. McGEER: The situation remained exactly the same until 1922. What were the gold holdings then?

Mr. TOWERS: \$132,000,000.

Hon. Mr. McGEER: So apparently there was no flight of gold holdings?

Mr. TOWERS: But you couldn't get it from the government.

Hon. Mr. McGEER: But the government could increase its holdings.

Mr. TOWERS: Yes, at a price.

Hon. Mr. McGEER: How much did the banks have then?

Mr. TOWERS: About \$83,000,000.

Hon. Mr. McGEER: How much in 1920?

Mr. TOWERS: About \$73,000,000.

Hon. Mr. McGEER: So that does not show there had been any flight of the holdings of gold in the banks?

Mr. TOWERS: I may suggest, Senator McGeer, that you cannot have a flight of gold if you cannot get gold.

Hon. Mr. McGEER: But the banks had \$70,000,000 odd of gold at the beginning of the depression in 1920, and at the end of the depression they had \$83,000,000.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: How much United States dollars had they in 1922?

Mr. TOWERS: I have no idea.

Hon. Mr. McGEER: What, without controls, caused the return of the value of the Canadian dollar to par with the United States dollars in 1922, and an increase in the gold reserves of the banks?

Mr. TOWERS: So far as the return to par is concerned, the pick-up in business and the increase in our exports as well as, I presume, a downward adjustment in our exports levelled out the situation.

Hon. Mr. McGEER: That situation continued from 1920 until 1929, did it not?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: What were the holdings of gold by the Dominion government in 1929?

Mr. TOWERS: They were \$63,000,000. There was a time when we really acted as if we were on the gold standard. We were, as you would call it, legally on the gold standard from 1925 on, speaking from memory, and when the strain started in 1928 the government was actually willing, I believe, to give up some of its gold, but early in 1929 decided not to do it any longer. So in effect we then went off the gold standard.

Hon. Mr. McGEER: How much gold did the banks have in 1929?

Mr. TOWERS: About \$63,000,000.

Hon. Mr. McGEER: And the government had how much again?

Mr. TOWERS: \$63,000,000 also.

Hon. Mr. McGEER: \$126,000,000. The collapse came and our Canadian dollar in relation to the United States dollar dropped to 82 during the period between 1930 and 1932?

Mr. TOWERS: No, commencing in September, 1931.

Hon. Mr. McGEER: Well, 1931 and 1932?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Then in 1932 it came back up to par?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: How much gold did the government have at that time?

Mr. TOWERS: The government holdings did not change at all in the years 1932, 1933 and 1934.

Hon. Mr. McGEER: You still held \$63,000,000 at that time?

Mr. TOWERS: \$73,000,000.

Hon. Mr. McGEER: In other words, we had the same experience. Following the depression of 1920 the gold holdings of the government increased, and following the depression of 1931-32 the government gold holdings increased again from what they were in the beginning.

Mr. TOWERS: I think we may perhaps be at cross-purposes here. During all those years, except very occasionally when some gold was shipped in very small amounts, the government was not taking any responsibility for the exchange rate. And now, if it were government policy not to take responsibility

for a stabilized rate in future, there is no need for exchange control. In that case the rate is left to be determined by the market, and under those circumstances our reserves are far more than adequate.

Hon. Mr. McGEER: There was no flight of gold from Canada during the depression period of 1920-21 or 1931-32, because after both those dates the gold holdings of the Dominion Government were larger than they were when the depression commenced.

Mr. TOWERS: If the government had been backing a certain rate, and had been willing to sell gold in order to support that rate we would not have had any gold at all. When you put gold in a vault and lock it up, and not let anyone in there, of course you will not lose any of that gold.

Hon. Mr. McGEER: But we continued on the same basis until 1939?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And then something happened. The rate was stabilized at 90-9?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: How was that stabilization effected?

Mr. TOWERS: It was effected by the government being willing to buy and sell unlimited quantities at that figure.

Hon. Mr. McGEER: Of U.S. dollars or of gold?

Mr. TOWERS: They would not sell gold, but gold enabled the government to acquire U.S. dollars.

Hon. Mr. McGEER: How much gold did the government have in 1939?

Mr. TOWERS: That information is in the Foreign Exchange Control Board report. It is not divided as between gold and U.S. dollars but the sum total of holdings of the Foreign Exchange Control Board, the Bank of Canada and the government was \$260,000,000.

Hon. Mr. McGEER: That is the total of our gold and U.S. dollars in 1939 when the exchange rate was stabilized and held.

Mr. TOWERS: Of course the private holdings in addition were \$132,000,000.

Hon. Mr. McGEER: Can you give me the total?

Mr. TOWERS: It was a total of roughly \$400,000,000.

Hon. Mr. McGEER: That is all the gold and U.S. dollars we had when we went into the war?

Mr. TOWERS: That is right.

Hon. Mr. McGEER: That was for Canada the worst period that was ever known in its history?

Mr. TOWERS: That is right.

Hon. Mr. MORAUD: Does that include U.S. securities held privately in Canada?

Mr. TOWERS: No.

Hon. Mr. McGEER: They are separate, but I will deal with them later.

Hon. Mr. MORAUD: It is quite a large amount?

Hon. Mr. McGEER: Yes, and the same story can be told there.

Mr. TOWERS: Of course we had a very narrow shave in 1941 when we got down to, I think, about \$180,000,000. We would not have kept that \$180,000,000 or anything at all, if it had not been possible to get something over \$200,000,000 from the U.K. in connection with her transactions with us in 1940.

Hon. Mr. McGEER: What was the gold production in Canada in 1939?

Mr. TOWERS: I think it was in the neighbourhood of \$200,000,000 which of course was being sold for U.S. dollars.

Hon. Mr. McGEER: Senator Crerar, do you know what the production was in 1939?

Hon. Mr. CRERAR: I think a little less than that, but close to \$200,000,000.

Hon. Mr. McGEER: I am anxious to know, Mr. Towers, what conditions you envisage as a possibility that it is going to be such that it would cause us to lose \$600,000,000 of our gold and U.S. dollars in the next few years?

Mr. TOWERS: Heavy imports, and a substantial volume of exports on credit for which we naturally do not receive U.S. dollars.

Hon. Mr. McGEER: What are these heavy imports that we are going to have from the United States?

Mr. TOWERS: That would require reference to the classified imports, which figures are available.

Hon. Mr. McGEER: My own impression is that as a result of the war we have increased our Canadian industrial capacity tremendously, and the demands by the United States for our products have increased proportionately, which would decrease what we formerly had to import from the United States and increase what we would in normal times export to the United States. What do you say as to that proposition?

Mr. TOWERS: I hope the level of trade will be high on both sides; fortunately we have a fairly high level of national income and employment. Under those circumstances we traditionally will be having importers from the United States. However the expected deficit is not imaginary; it is taking place each month; we see it in our U.S. dollar figures. In my remarks yesterday, while I emphasized that one should not attempt to make an accurate prediction over two years, there was every reason to suppose from the present experience and from studies which have been made in regard to our prospective imports to believe that our U.S. dollar deficit over those two years might be of the order of \$600,000,000.

Hon. Mr. McGEER: Are you unmindful of the fact that a great many American investors are coming into Canada and increasing their investments here?

Mr. TOWERS: No, I am not; but I also express the belief that on the capital account we would lose U.S. dollars rather than receive them over the next two years, because I believe that a fair amount of Canadian securities maturing or becoming callable in the United States will be refinanced in Canada.

Hon. Mr. McGEER: May I give three instances of which I am personally aware and with which you no doubt are conversant. One is the Powell River Company on the Pacific Coast.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: It is one of the large newsprint and pulp producers and is a concern of American origin whose head office is still in Minneapolis. They are internationally operating in Florida, Washington and British Columbia. The Powell River Company on the assumption that the trade with the United States is going to increase, and that the great bulk of the trade is in the American market, have increased investments on their plant to the extent of \$15,000,000. Do you know that that is so?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Do you know that Bloedell, Welch and Stewart is also a large international operator on the Pacific Coast?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Do you know that they have sold their holdings in the state of Washington and are reinvesting \$6,000,000 in a new pulp mill in Alberta for export to the United States?

Mr. TOWERS: I was not aware of it, but I am glad to hear it.

Hon. Mr. McGEER: Do you know that the Ocean Falls Newsprint Company, which is a San Francisco organization operating in British Columbia, have made a several million dollar expansion to their business in the anticipation of increased exports to the United States?

Mr. TOWERS: Yes, and there are some new developments taking place in Ontario and Quebec as well.

Hon. Mr. McGEER: I am only speaking of the ones I know, and I suggest that there are even more extensive operations in Ontario and Quebec.

Hon. Mr. HAIG: What does the Powell River Company do?

Hon. Mr. McGEER: It is a newsprint and pulp company. The same thing is taking place all over.

Now, Mr. Towers, I am informed that the requirements of the plastic industry in the United States is going to require in the future more Canadian pulp than has been required in the past, for newsprint purposes. Have you heard that?

Mr. TOWERS: I have heard something about it, but I cannot pretend to be familiar with it.

Hon. Mr. McGEER: There is just one example of a huge increase in the permanent export trade from Canada to the United States. Do you agree with that statement?

Mr. TOWERS: I certainly hope our exports will continue at a high level and will increase. Of course allowance is made in the guess that I made the other day, but I am also hopeful that the level of employment and income here will continue high during the period we are talking about. It is on that assumption that I believe that our almost traditional deficit with the United States will be larger than it was before the war.

Hon. Mr. McGEER: May I point out that the Director of the Travel Bureau, appearing before our Senate Tourist Investigation Committee said that the new conditions of labour in the United States, that is holidays with pay and higher rates of wages, have thrown on the market an enormous increase in American tourist trade which is available to Canada and as a result of that the government has increased the appropriation for advertising for tourist trade from \$250,000 to \$670,000 this year. We were told by the Director of the Travel Bureau that we could look forward to a steady increase of the largest tourist trade volume that we have ever known in our history. Do you agree with that?

Mr. TOWERS: I hope we will have an increase in the volume.

Hon. Mr. McGEER: Do you not see that it is reasonable to expect that we are going to get it?

Mr. TOWERS: I think it is so.

Hon. Mr. McGEER: Do you know that the quotas for our lumber trade now is, 50 per cent for Canadian consumption, 35 per cent for British consumption and 15 per cent for the rest of the world?

Mr. TOWERS: I have forgotten the figures.

Hon. Mr. McGEER: Those are the figures as I have them. I am told by British Columbia and other lumbermen that the market for Canadian lumber and shingles is large enough in the United States now to take everything that we are cutting if we want to sell it there. Do you know that?

Mr. TOWERS: Well I know that there is a tremendous demand for lumber in the United States.

Hon. Mr. McGEER: And that they believe that the demand will continue, but that we will not fill that demand; we are satisfying our domestic needs and

we are meeting the requirements of Great Britain. If it is necessary to save our Canadian dollar we could increase our export to the United States tremendously by transferring it from Great Britain to that country. Could we not do that?

Mr. TOWERS: Is that a question, Senator McGeer?

Hon. Mr. McGEER: If we were endangering our dollar position with the United States, we could stop exporting to Great Britain and export lumber to the United States, could we not?

Mr. TOWERS: There are various things which we are selling elsewhere which could be sold in the United States.

Hon. Mr. McGEER: That shows a tremendous increase in the export of our forest products, a large increase in industrial production in Canada, and an increase in American investments in industrial production in Canada as part of our post-war programme, does it not?

Mr. TOWERS: Yes, I think so.

Hon. Mr. McGEER: All of those would indicate that we are going to have a surplus of American dollars.

Mr. TOWERS: You have forgotten the imports.

Hon. Mr. McGEER: What are the imports that are going to offset this huge increase in exports that are contemplated?

Mr. TOWERS: I could not recite a catalogue but I could produce trade figures.

Hon. Mr. McGEER: What are they? You are talking about imposing upon the people of Canada the most drastic controls that have ever been imposed, to protect us against a position that you envisage. Now I have given you a picture that repudiates that.

Mr. TOWERS: No; you have given a series of general statements.

Hon. Mr. McGEER: No; I have told you what Americans are investing in Canada to satisfy the increase in Canadian trade with the United States that they contemplate.

Mr. TOWERS: I think Canadian trade with the United States will increase, but I believe that imports will increase more.

Hon. Mr. McGEER: You have told me that if you were sure we were going to have enough American dollars and gold to protect our position you would not need these controls.

Mr. TOWERS: That is right.

Hon. Mr. McGEER: Now I say to you quite frankly that the picture as it is now indicates a tremendous flow of American dollars into Canada through the increase in our exports of forest products. And I go a little further. There is a shortage of lead, is there not?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: There is a shortage of zinc. There is a shortage of copper, and there is a demand in the United States for all the lead, zinc, copper and silver that we can produce in Canada, is that not right?

Mr. TOWERS: That is right.

Hon. Mr. McGEER: So we can look forward to—

Mr. TOWERS: I have got so accustomed to saying "That is right" to everything, that I just said it automatically in that case. I do not think zinc is in quite such a cheerful position as the other things.

Hon. Mr. McGEER: I am very well satisfied with the position as far as we have gone, Mr. Towers, and I think you and I have the same purpose in mind. We are both looking for a secure, prosperous and progressive Canada. I

do not think there is any question about that. Now let us come back to what are these imports that are going to offset that. What imports are going to offset our exports? What imports are going to increase?

Mr. TOWERS: I think rather than pick out a couple of obvious items and leave it at that I should do it on the basis of a memorandum. Otherwise what I say will be completely vague and just inconclusive and waste the time of the committee, but I would be glad—I am speaking very sincerely—to try to bring something that was more concrete.

Hon. Mr. McGEER: You see, we are contemplating putting in those ludicrous controls over the people of Canada; and I can tell you that a great many people in our nation, when they come up against this kind of thing, will be just like you said the man would be in the illustration given by Senator Kinley yesterday—they will think the thing is utterly insane. They will think more than that—that parliament has been converted into a lunatic asylum. They will want to know definitely the reasons why we have to have these controls. And we who are responsible to the people have got to go out and tell them about it.

The CHAIRMAN: I would ask the honourable senator to continue cross-examining the witness and not to make a statement.

Hon. Mr. HAIG: On a point of privilege, Mr. Chairman, I do not think one man should be allowed to make speeches. I submit, Mr. Chairman, that you must see that everybody keeps within the rule. Senator McGeer is not the only individual in this room. He may be the most brainy man in Canada, at least in his own estimation, although he may not be that in the estimation of the rest of us. I ask that he be kept within the rules.

Hon. Mr. McGEER: I understood that the members of the committee had completed their questions.

The CHAIRMAN: Let us proceed with the cross-examination.

Hon. Mr. HAIG: Mr. Chairman, I ask you please to hold him to cross-examination and not permit him to make speeches.

The CHAIRMAN: I think he has been warned now.

Hon. Mr. McGEER: Now, Mr. Towers, you say that you will give us a memorandum of the imports that you think are going to cause a deficit, a depreciation of our gold and U.S. dollars, is that right?

Mr. TOWERS: Yes. I do not know that it is possible to predict in every commodity what the imports may be, but I think it is possible to take the present situation in respect of imports and to form views in regard to what the increases may be over a certain period of time.

Hon. Mr. McGEER: Will you do the same thing for exports?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Because, after all, if you have formed a conclusion that we are going to run into a deficit of \$600,000,000, it must be because imports and exports do not balance?

Mr. TOWERS: Incidentally, of course, we are running into a substantial deficit now.

Hon. Mr. McGEER: In 1939 there was no such thing as Bretton Woods.

Mr. TOWERS: That is right.

Hon. Mr. McGEER: Bretton Woods, as I understand it, is a security for every nation which is a party to it, in the matter of the buying power of its dollar on the exchange market.

Mr. TOWERS: Bretton Woods is intended to help, temporarily at least, those countries which find themselves short of foreign currency.

Hon. Mr. McGEER: For instance, if the Canadian dollar gets out of equilibrium with the American dollar and we have not any dollars or any means of rectifying the situation ourselves, we have a right to apply to the International Monetary Fund for assistance?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And they will lend us United States dollars?

Mr. TOWERS: If they have any at that time.

Hon. Mr. McGEER: But they would do more than that, would they not? They would stop the United States from varying its exchange against us under certain circumstances?

Mr. TOWERS: The United States would be bound by the same form of agreement as other members, *i.e.* not to vary its rate by more than 10 per cent on a unilateral basis, or if it was any more than that they would have to have agreement.

Hon. Mr. McGEER: There are also provisions to hold it at par or within a very short distance of par after it is fixed at par?

Mr. TOWERS: Of course, the Americans have no commitments in regard to the Canadian rate.

Hon. Mr. McGEER: Anyway, in addition to whatever else we might have, we have Bretton Woods to look to, which we did not have in 1939.

Mr. TOWERS: That is a possible source of credit.

Hon. Mr. McGEER: To help to stabilize the value of the Canadian dollar in the United States or any other place?

Mr. TOWERS: That is right.

Hon. Mr. McGEER: You have on hand today one billion 500 million dollars of gold and U.S. dollars?

Mr. TOWERS: Yes, more or less.

Hon. Mr. McGEER: That is, you had it at December 31, 1945?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And you told us this morning that it was substantially the same.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And you said that if the minister wants to disclose what the actual provision is, that is up to him.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: If we lost \$600,000,000 of gold and U.S. dollars in the next few years we would still have on hand a reserve of \$900,000,000?

Mr. TOWERS: I suggested the possibility of \$600,000,000 to \$750,000,000, if there was control over capital movement.

Hon. Mr. McGEER: We have looked at the period of 1932 to 1939, and there was no change then. We have gone through two depressions of a violent nature, and at the end of each Canada had more gold than when the depression started.

Mr. TOWERS: With no commitment in regard to stabilizing the rate.

Hon. Mr. McGEER: There was no control at all?

Mr. TOWERS: That is right.

Hon. Mr. McGEER: You tell us that because you think there is going to be a deficit of \$650,000,000 in gold and U.S. dollars, which will leave you with a reserve of \$900,000,000 of gold and U.S. dollars—

Mr. TOWERS: I suggested the possibility of \$600,000,000 to \$750,000,000.

Hon. Mr. McGEER: Well, I will say \$750,000,000.

Mr. TOWERS: Leaving, say, \$750,000,000.

Hon. Mr. McGEER: Leaving say \$750,000,000 of gold and U.S. dollars in your reserves. That is the worst that you envisage?

Mr. TOWERS: With control.

Hon. Mr. McGEER: Well, what would it be without control?

Mr. TOWERS: That depends upon the atmosphere, the degree of confidence in the United States, and also on other matters affecting decisions in the United States; as to whether they want to sell their Canadian bonds here and take the funds out. I may say that as a matter of fact, which I did not mention in my remarks the other day, we have always been vulnerable to changes of opinion in the United States. The degree of vulnerability has increased during the war, not only by reason of the fact that United States residents now hold some \$500,000,000 in Canadian securities more than they did at the beginning of the war, but also because they now hold substantial amounts of Canadian domestic bonds, that is bonds payable in Canadian dollars, which they bought during the war. If there is freedom in regard to the export of capital, there would be a strong inclination to realize on those holdings.

Hon. Mr. McGEER: Why?

Mr. TOWERS: Because the rate is now at par and because the interest which they earn on those Canadian bonds is only very little above what they could earn on U.S. bonds.

Hon. Mr. MORAUD: May I ask a question, please? What was the proportion of realization of Canadian securities after the exchange was placed at par?

Mr. TOWERS: The sales have been very small, hardly noticeable, because of course it is not possible for the man or the company which sells to get U.S. dollars from the proceeds of the sale, unless the sale is to another non-resident on the unofficial market at New York. I have not looked at the quotations during the last few days, but a few days ago it was $3\frac{1}{2}$ per cent. If there is not any substantial amount of sales of securities here and there was a substantial volume of funds being offered in that unofficial market at New York, that rate would go down. And at a certain level the owner of the securities would decide it is not worthwhile selling them and taking that loss.

Hon. Mr. MORAUD: Would you not regard the small proportion of selling after the exchange was put at par as an additional indication of confidence in Canada?

Mr. TOWERS: Yes, their degree of confidence at the present time is high. Certainly most of those who bought those domestic bonds would not want to sell them and take them out at 3 or 4 or 5 per cent discount on the unofficial market. On the other hand, if they were certain of getting U.S. dollars at par, the temptation would be pretty strong.

The Committee adjourned until 8 p.m.

The Committee resumed at 8 p.m.

The CHAIRMAN: Honourable members, I am informed that Mr. Towers will not be available to-morrow morning and that means that unless we close the cross examination to-night we will have to go on possibly to-morroy night or on Friday. I do not want to press anybody unduly, but if we could proceed expeditiously, it would be well because we have yet a certain number of honourable senators who have not had any chance, up to this minute, to say a word on the question.

Hon. Mr. HAIG: This morning I made some remark and one of my supporters said to me this afternoon that he thought I was too bitter. I had no bitterness in my heart at all and if the honourable gentlemen feel aggrieved, then I gladly withdraw my words.

Hon. Mr. KINLEY: I wonder if I could ask a question before the cross examination starts, a question which concerns Nova Scotia?

The CHAIRMAN: You are out of order; if we are to proceed expeditiously I think we must keep to a fast rule and I would ask you to refrain. You will have a chance later on.

Hon. Mr. ABBOTT: I wonder if, before Senator McGeer resumes his cross examination of Mr. Towers, I might say a few words. A question was raised yesterday, I think, as to the placing of a time limit on the operation of this bill. I indicated that I would be prepared, subject to confirmation by my colleagues, to agree to a reasonable limit along the lines suggested with respect to that point. My colleagues are in agreement that a limit such as suggested would be acceptable. I realize that we are discussing the subject matter of the bill and not the details and that there have been a number of matters raised in the course of the discussion which indicates that some amendments, in certain particulars, might meet the views of some honourable senators.

Some members have mentioned, for instance, that since the parity of the rate of exchange with the United States dollar, United States currency is more freely in circulation than formerly, and that it is an offence under the Foreign Exchange Control Order and Regulations. That is true, but the great bulk of that currency will eventually find its way into the banks, so no great harm is done; and the intention would be, if the bill is enacted, to provide an exemption by which a resident could have in his possession a moderate amount of United States currency without committing an offence. I realize this is not the time and the place to suggest an amendment, but if the committee felt it would be preferable to provide for an exemption of this nature, say up to \$100.00, there would seem to be no great objection to doing so, providing that the exemption might, if it should be necessary, be reduced or eliminated by regulation which would require the approval of the Governor in Council. I think the committee will realize why it would be necessary to have a provision of that nature. There should be means of checking a leak of that kind, if it developed to proportions considered to be dangerous.

The same question has been raised by a number of honourable senators particularly by Senator Kinley, with respect to the fact that the bill now requires a permit for the export or import of all property. Here again it was felt that the most appropriate course in drafting an act was to word the provision in general terms and to make exceptions by way of regulation from the point of view of effective administration of the act. I am informed that it is unlikely that it would be necessary to extend the present control in the foreseeable future; but if it be felt desirable to do so, there would be no objection to limiting the permit required for the export of goods, securities, and currency and for import to goods, which is in line with the present practice. The third point which has also been raised here and which has also been indicated, relates to the determination of the fair value, under regulation 1C3, and it has already been indicated that the necessity of the exercising by the board to determine subject to appeal to the Exchequer Court, has, in practice, been limited to transactions between related companies, which are not at arms' length, through dealings with each other and that it is unlikely to prejudice the effective administration of the act if the power of determining fair value were limited to that category of cases. If we felt it desirable to amend the provisions of the act along those lines, there would be no objection to it. There might be some

other points as to which similar amendments might be appropriate, but I indicate those because they have been raised here. The important one, I think, is the duration provision; but the others may be of some substance.

Hon. Mr. McGEER: What is the objection to continuing in the bill the provision for the regulation exempting temporary visitors entirely out of the bill?

Hon. Mr. ABBOTT: Well, it is felt that that could be the subject of abuse. It was in the original bill and was taken out at the suggestion of the Department of Justice because they felt it would be a matter that could be more appropriately handled by administrative regulations from time to time. Frankly, let me say, as far as I am concerned, if the committee felt that it was desirable and necessary to have in the bill a provision with respect to tourists, which is now in the existing regulations, I would have no objection to it provided that a similar practice were made with respect to what I am suggesting with regard to currency limits which people may hold.

Hon. Mr. McGEER: That would be in line with the \$100 provision which is in the Customs Act.

Hon. Mr. ABBOTT: I do not want to interject a discussion as to the detailed provisions of the bill, but I would point out to the committee at this stage that that sort of matter can, if it be felt desirable, be handled in the bill rather than by regulation.

Hon. Mr. McGEER: One other suggestion: In the making of the regulations I suggest to you, as a matter of practical experience, speaking as a former member of parliament and of the government, that the regulations should be made by the Governor in Council and that they should always be under the control of the Governor in Council. I ask you to take this under consideration. This is not an order in council from which this power comes. This power which has been given, comes from the parliament, which is different from the power that the board now has, which comes directly from the Governor in Council.

Hon. Mr. ABBOTT: It comes from the War Measures Act.

Hon. Mr. McGEER: It comes from parliament, the government, and then, by an act of parliament to the Foreign Exchange Control Board by order in council; and that places the Governor in Council in control of everything which the Foreign Exchange Control Board has in the way of power or has in the way of making regulations or administrative action. When we pass this act and give the board power to make regulations, although they are subject to approval by the Governor in Council, once they are approved by the Governor in Council, they become a part of the law and I question very much whether the Governor in Council, having approved of the regulation, would then have power to initiate a change in the regulations. If the Governor in Council makes the regulations of the Foreign Exchange Control Board and the Board administers them, the Governor in Council will always be directly responsible for the regulations, for control over them, for power to withdraw them or for power to amend them. That power under the present proposal would not be continued in the Governor in Council.

Hon. Mr. ABBOTT: That is a matter of legal opinion. I agree with you that the Governor in Council would not only have the power to make the regulations but to approve them and to rescind them; I believe that power exists.

Hon. Mr. McGEER: There would not be any question about it; if the Governor in Council instead of the board made the regulations.

Hon. Mr. ABBOTT: I would agree that no board should have the power to make regulations that could not be rescinded by the government of the day; but it is purely a legal question, how the authority should be exercised.

Hon. Mr. McGEER: Would there be any objection to the Governor in Council making the regulations? Technically, they would be passed by order in council instead of as they are now, passed by the board and approved by order in council?

Hon. Mr. ABBOTT: I would like to discuss that matter with the Department of Justice.

Hon. Mr. McGEER: Another principle in connection with that is the question of responsible government. I think that if the Governor in Council is directly responsible for these regulations, it is quite likely that the Governor in Council would be more careful to consider what it is enacting.

The CHAIRMAN: May I call attention of the honourable senators to the fact that we are supposed to proceed with the cross examination of the witness.

Hon. Mr. McGEER: I thought that, having introduced a subject, there were some things that might be considered at the same time. I may have been out of order in that, but this seemed to me to be an appropriate occasion to bring them to the attention of the minister.

Hon. Mr. ABBOTT: I think the point is answered in the subject matter of the bill; but again that is a matter of opinion. The board is, in effect, simply the creature of the minister; it is fully responsible to him and through him to parliament for all its actions. Subsection 4 reads:

4. The minister shall control and direct, for the purposes of this act and subject to its provisions, the operation of the exchange fund account hereinafter mentioned and the Foreign Exchange Control Board hereinafter established.

Hon. Mr. McGEER: That is the minister; that is not the Governor in Council.

Hon. Mr. ABBOTT: My honourable friend knows that the Governor in Council is the cabinet and that the minister is a member of the cabinet.

Mr. MACNEILL: This bill would in the ordinary course come back here for detailed examination in any event.

Hon. Mr. ABBOTT: I do not want to interject a detailed discussion of the bill now; but, as I have said, I thought it might be helpful if I indicated at this stage the attitude of the minister and the government with respect to some of these matters.

The CHAIRMAN: Let us proceed.

Hon. Mr. McGEER: Now, Mr. Towers, have you those statements of imports and exports?

Mr. TOWERS: Yes, I have them. I think, perhaps, it would be best if I put it on the record. The statements read as follows:—

CANADA'S ESTIMATED BALANCE OF PAYMENTS WITH DOLLAR COUNTRIES;
CURRENT ACCOUNT, CALENDAR YEAR 1946 AND 12 MONTHS
ENDING SEPTEMBER, 1947
(In Millions of U.S. Dollars)

RECEIPTS	1946	1947
Exports to U.S.A.	838	920
Exports to other countries for payment in \$	233	220
Net non-monetary gold	107	125
Tourists	180	200
TOTAL	1,358	1,465

PAYMENTS

Imports from U.S.A.	1,215	1,375
Imports from other countries for payment in \$	166	190
Tourists	102	110
Interest and Dividends (net)	155	160
Freight (net)	62	65
Other Current Items (net)	30	5
TOTAL	1,730	1,905
Estimated loss of U.S. Dollars in Current A/C	372	440

These estimates are based on 1946 experience and assumptions in regard to the coming 12 months which appear reasonable at this time. Even if the inevitable errors turn out to be on the side of overestimation of U.S. dollar deficit, there seems to be no likelihood of the deficit being less than \$300 millions for 1946, and say \$350 millions for 12 months ending September 1947.

IMPORTS FROM THE DOLLAR AREA, COMPARED WITH PRE-WAR
(In Millions of U.S. Dollars)

	1937	1st half 1946	Est. 1946	Est. 1947 (12 months ended Sept.)
From U.S.A.	463	560	1,215	1,375
From other countries paying in \$	78	79	166	190
TOTAL	541	639	1,381	1,565

EXPORTS TO COUNTRIES MAKING PAYMENTS IN U.S. DOLLARS,
COMPARED WITH PRE-WAR
(In Millions of U.S. Dollars)

	1937	1st half 1946	Est. 1946	Est. 1947
To U.S.A.	391	406	838	920
To other countries paying in \$..	157	113	233	220
TOTAL	548	519	1,071	1,140

I could emphasize some of the main features; or, on the other hand, I could cover them in detail.

Hon. Mr. McGEER: I would like to have it in detail.

Mr. TOWERS: May I mention the main features first, and then come to some of the details in the light of what was said earlier; and I would like to emphasize that these estimates, while they are based on present experience and based on a sensible appraisal of the prospects, are, like all estimates, subject to change in the light of unforeseen developments. But these figures which I have here relate to Canada's estimated balance of payments with dollar countries in terms of United States dollars.

I have two sets of figures. One set relates to the calendar year 1946 of which a good portion, as you may imagine, at least half a year, is not an estimate because the figures are actual ones. The second set is that of figures representing estimates of the situation for the twelve months commencing September 1st next. I picked that period because of the fact that on an earlier occasion I have talked about the prospects for the next twelve months.

These first figures, for the calendar year 1946, indicate receipt of United States dollars of \$1,358,000,000; and they indicate expenditure of United States dollars of \$1,730,000,000, or a deficit in current account transactions in United States dollars for the present calendar year of \$372,000,000.

For the year commencing September 1, 1946, roughly the next twelve months, receipts of \$1,465,000,000, and expenditures of \$1,905,000,000, and a deficit again in current account of \$440,000,00. These estimates are based on

1946 experience and on assumptions in regard to the coming twelve months which appear reasonable at this time. Even if the inevitable errors turn out to be on the side of over estimation of United States dollars deficit, there seems to be no likelihood of the deficit being less than \$300,000,000 for 1946, and, say, \$350,000,000 for the twelve months ending September 1947. Now, it may occur to the honourable senators, that to produce, first of all, a possible figure of \$440,000,000 deficit for the twelve months commencing September 1 next—and even after, we do not know, it may be a little on the high side, but keeping very conservative—we cannot see a deficit of less than \$350,000,000 for one year; it does not agree very satisfactorily with the case which I made earlier on that, over the next two years we might on current account have a United States deficit, in United States dollars, of something over \$500,000,000. If it is \$350,000,000 for the first year, that would leave only \$150,000,000 for the second. The reason for that is that in making the original statement here in the committee, I did want to be careful not to lay myself open to the suggestion that I was raising bogeys in order to convince people of the necessity for having an exchange control. I could have used, on the basis of reasonable probabilities, a current account deficit figure distinctly higher of \$500,000,000, but I preferred to be on the definitely optimistic side from that point of view.

Now, as to the make-up of these figures, I do not think we are being optimistic in regard to possible experience with the United States. For example, in 1946 they will be approximately \$838,000,000; but we put down \$920,000,000 for the year commencing September 1, 1946. That is an increase of \$82,000,000. In exports to other countries for which we receive payment in United States dollars, the present calendar year shows \$233,000,000, while in the next period that I am speaking of, \$220,000,000; that is a decrease of \$13,000,000; but we have had to cut out for the 1947 period receipts from UNNRA which were \$33,000,000 in the 1946 period. Then we assume that gold will go up from \$107,000,000 to \$125,000,000; and that receipts from tourist traffic will go up from \$180,000,000 to \$200,000,000. Incidentally, all of these figures are in terms of United States rather than Canadian dollars. Receipts from tourists spending American money of \$180,000,000 is, of course, a very high figure in relation to the past. In the year before the war it was about \$125,000,000; but for next year we say \$200,000,000.

On the import side—and here is where we come to the bigger figures—for the calendar year 1946, imports from the United States amounted to \$1,215,000,000. In the second period of twelve months ahead we hope that these imports will go up to \$160,000,000, to a total of \$1,375,000,000. Imports from other countries for which we pay United States dollars, first period, \$166,000,000; next period, \$190,000,000; tourist expenditure by Canadians in United States dollars, this year, \$102,000,000; next period \$110,000,000; net United States dollar costs for payment of interest on dividends, \$155,000,000 and \$160,000,000 respectively. Then there are some freight items and other small current items which I won't bother to mention; but to give an indication of the situation in regard to exports and imports because it is hard to evaluate these figures unless we can make some comparison.

Exports to the United States—I picked 1937, the pre war year, because it was a good year for our exports to the States. It will be recalled that business was picking up strongly in that year, when our exports to the States were \$391,000,000; and for 1947 we estimate them at \$920,000,000. In other words, an increase of not quite two and one-half times. Of course, prices have risen in the interval but it is also assumed there will be a definitely stronger volume of exports to other countries paying us in United States dollars of \$157,000,000 in 1937 and \$220,000,000 in 1947. Total exports for which we received payment in United States dollars in 1937 amounted to \$548,000,000, and in 1947 \$1,140,000,000. So that does indicate more than a doubling in value of our trade

with the United States dollar countries on the import side, and we have got more than a doubling. From the United States in 1937 we imported \$463,000,000 worth of goods and we estimate that for the twelve months commencing September 1 next that the value of the imports from the United States will treble as compared with 1937; that will be \$1,375,000,000 from other countries which we pay United States dollars; and we estimate that the cost will more than double from \$78,000,000 to \$190,000,000, making the total United States dollar cost of United States imports of \$1,565,000,000.

I do not think that that figure is at all distorted because the estimated cost for 1946 is \$1,381,000,000 and that is in line with the actual experience for the first half of this year. We estimate a moderate increase in imports in the last half of this year compared with the first, but not a formidable difference. In other words, these figures are based on present experience plus an allowance for a fair increase in exports sold to the States and of tourist receipts and from a further increase in our imports from the United States, which is already becoming evident as supplies in that country come from their factories in greater quantity.

Hon. Mr. McGEER: Have you any details upon which these figures are made up? What do these imports consist of? What are these dollar countries outside of the United States?

Mr. TOWERS: It is practically confined to the Latin American countries plus the fact that we do get some dollars from our trade with Europe.

Hon. Mr. McGEER: What countries would you put in the category of United States dollar countries?

Mr. TOWERS: So far as imports are concerned, all countries except those in the sterling area.

Hon. Mr. McGEER: And they consist of the United States, the Latin American countries, and what else?

Mr. TOWERS: I would have to get a geography to name them all, but countries outside of the British Commonwealth. The sterling area comprises the British Commonwealth and Empire except Canada and Newfoundland, Egypt, the Anglo-Egyptian Sudan, Iceland, Irak and countries with whom we pay dollars for imports and all the other countries in the world with whom we trade, except the ones I mentioned.

Hon. Mr. McGEER: And what do the imports from the United States consist of? I mean the larger categories, I do not want the minor ones.

Mr. TOWERS: The dominion bureau figures of the Department of Trade and Commerce for the first six months of this year contain of course tens of thousands of items, but in categories. Incidentally, this total of imports for the six months, \$618,000,000, does not seem to agree with the figure I gave a moment ago of, I think, \$560,000,000. But I see my \$560,000,000 was in terms of American dollars; this is Canadian. These figures show \$618,000,000 for the first six months of this year as the value of imports from the United States. Here are the larger categories:—

Agricultural and vegetable products	\$ 75,000,000
Fibre, textiles, and textile products	57,000,000
Wood, wood products and paper	31,000,000
Iron	201,000,000
Non-ferrous metals and metal products	31,000,000
Non-metallic products except chemicals	111,000,000
Chemicals	42,000,000
Miscellaneous commodities	43,000,000

That amounts, \$618,000,000, is exactly the same as the figure for the first six months of 1945, although in 1946 the war products in 1945 war importations were exceedingly heavy. That is, we are importing from the United States on a wartime scale but for civilian purposes.

Hon. Mr. McGEER: Those are the exports in categories.

Mr. TOWERS: Yes. By the way, these figures are just for the United States. It would be a very complicated matter to give the additional figures of imports from other dollar countries.

Hon. Mr. McGEER: What about exports?

Mr. TOWERS: I think I have those here. I do not believe that in this export publication they are separated into the same categories.

Hon. Mr. McGEER: They are kept separate in some categories?

Mr. TOWERS: They are separated into a million categories, but not re-assembled in the form which I have here. I think that information is obtainable, but it does not happen to be in this publication.

Hon. Mr. McGEER: But you have the information, whether it is in that category form?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: In the light of the information you have given to us, the thing that strikes me as being extraordinary and unusual is that the government of Canada should have taken the action which it did take on July 6 of this year, and which reduced the flow of American dollars to Canada.

Mr. TOWERS: Does it? I was not aware it would reduce the flow of American dollars to Canada.

Hon. Mr. McGEER: I thought you told us this morning that as a result of taking off the 10 per cent premium on Canadian dollars the inducement to invest in Canada had been discouraged.

Mr. TOWERS: We were not talking about direct investment, but of purchases of Canadian securities as a purely market transaction. Yes, that change in rate will reduce those purchases and will therefore tend to arrest the increase of our debt in the United States.

Hon. Mr. McGEER: And arrest your increased accumulation of American dollars?

Mr. TOWERS: That is right.

Hon. Mr. McGEER: Does not a ten per cent premium on Canadian money payable in terms of U.S. dollars increase the returns on goods exported from Canada to the United States and U.S. dollar countries?

Mr. TOWERS: It does not increase our reserves of U.S. dollars unless it is the case that the 10 per cent premium on United States funds enables certain Canadian industries to compete where they could not otherwise do so. Under existing conditions the demand for goods around the world is such that I believe our great industries are fully able to compete and hold their own.

Hon. Mr. McGEER: For instance, take Canadian gold.

Mr. TOWERS: I realize that in that field the change in rate of course will have a certain effect on production and will lessen somewhat the amount of United States dollars which came from that source.

Hon. Mr. McGEER: Why was that done then in the face of the urgent demand for United States dollars which this deficit you present now indicates?

Mr. TOWERS: I would not say the immediate necessity is great, because, as already stated, Canada has very substantial reserves—reserves which will enable us to meet what in prewar terms would have been regarded as an enormous deficit, and to come through the transition period without imposing, I should hope, any restrictions on imports, until we come to the time when we hope our customers who are not now able to pay a substantial amount in United States dollars for our products will be in a position to do so.

Hon. Mr. McGEER: Does it not strike you that the practical remedy for that situation is not in controlling Canadian currency so much as in developing production in Canada and working out a rate with the United States whereby Canadian and American trade can be balanced?

Mr. TOWERS: I should certainly hope that in the course of the next year—shall we say?—the efforts which are being made to encourage freedom of trade will be fruitful.

Hon. Mr. McGEER: I think you will agree with me that in the face of this deficit which you present we certainly should do everything in our power to encourage, develop and extend the tourist trade from the United States into Canada?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Well, Mr. Towers, to come back to what I was discussing at the adjournment, have you that statement of American investments extending over that period of time?

Mr. TOWERS: Yes; not for all the exact years that you mentioned, but I think it will serve your purpose. I have the estimates of the Dominion Bureau of Statistics for the years 1926, 1930, 1933 and 1939. We ourselves have tried to bring them up to date as at the end of 1945.

Hon. Mr. McGEER: May I have a look at that statement?

Mr. TOWERS: Yes. (Hands statement to Senator McGeer).

Hon. Mr. McGEER: In 1926 the total investment by the United States in Canada was \$3,196,000,000. Is that right?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Having gone through the depth of the depression, we went up at the end of that break shown on your chart, between 1931 and 1932, with an increase of investments by the United States from \$3,196,000,000 to \$4,491,000,000. Is that right?

Mr. TOWERS: You mean in 1933?

Hon. Mr. McGEER: Yes.

Mr. TOWERS: That is, U.S. investments in Canada?

Hon. Mr. McGEER: Yes; and the United States investments in Canada continued until in 1939 they were at \$4,190,000,000.

Mr. TOWERS: Yes. They went down somewhat, and we repatriated securities in those intervening years between 1933 and 1939.

Hon. Mr. McGEER: And today they stand at \$4,925,000,000?

Mr. TOWERS: That is our estimate.

Hon. Mr. McGEER: During that period shown in this chart, in which Canada and the United States together went through one of the worst economic depressions that the world has ever known, we wound up in 1939 without any indication of any flight of Canadian investments or of the Canadian dollar.

Mr. TOWERS: In times of crisis United States capital, not direct investment, but marketable securities or a portion of them, would tend to run, but this would be checked by the exchange rate. On the other hand, with the very high premium on United States funds, naturally Canada does not repatriate any securities deliberately.

Hon. Mr. McGEER: That is very true. Quite apart from the reason, we have gone through the depression and through this war, and we have wound up with an increase of American investments in Canada since 1926 from \$3,196,000,000 to \$4,925,000,000.

Mr. TOWERS: What was the first period you mentioned?

Hon. Mr. McGEER: 1926.

Mr. TOWERS: On the other hand, I think you will readily understand that, between late 1939 and 1940 and probably the early part of 1941, what would have happened: the exit of United States capital would have been tremendous. There were times when Dominion Government bonds were selling in New York at 60 cents on the dollar.

Hon. Mr. McGEER: You yourselves took the attitude that the situation was serious because your board would not allow re-investment by Canadians in Australian bonds on the New York market.

Mr. TOWERS: We did not have enough money.

Hon. Mr. McGEER: You would not allow any re-investment.

Mr. TOWERS: Re-investment of a conversion security?

Hon. Mr. McGEER: Yes. You took the attitude at one stage, when Japan was threatening Australia, that Australia investment was not a good investment.

Mr. TOWERS: Oh, no; we would not allow people to buy additional Australian bonds, but not because we thought they were bad investments.

Hon. Mr. McGEER: As a matter of fact, during the period from 1941 to 1942 it looked to many investors that the war would end with disastrous consequences but yet we were strong. Now what I am pointing out is that you fear that all of a sudden there is going to be a flight away from Canada of American investments and American dollars which will wreck this billion five hundred million dollar reserve that we now have, and wreck our financial position. I ask you to recall that Canada and the United States have gone through the depression and through the war, and having done all that, is this not the result: that from 1920 to 1946 we have increased our gold and U.S. dollars by nearly five times?

Mr. TOWERS: From 1920?

Hon. Mr. McGEER: Yes, roughly speaking. According to your figures we had something less than \$350,000,000 in gold and U.S. dollars in the banks and government in 1920.

Mr. TOWERS: Yes; I was not criticizing your estimates of five times, because I think it is a bit more.

Hon. Mr. McGEER: It increased from something under \$300,000,000 to \$1,500,000,000?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And from 1926 to 1945 we have increased our investments by the United States in Canada from \$3,196,000,000 to \$4,925,000,000.

Mr. TOWERS: Yes, and that is one of the reasons we have the cash.

Hon. Mr. McGEER: But why in the face of that record do we now fear that the situation is going to be completely reversed?

Mr. TOWERS: By the way, the term "flight of capital" almost implies complete despair and panic. I am not suggesting that, but I am suggesting that if in a couple of years from now our reserve is cut in half, to \$750,000,000, how much could we afford to risk in the way of a movement back of funds to the United States? It is not a question of thinking that the large part of our five billion dollar investment would go. If any circumstances unbalanced the movement of a few hundred million dollars—three or four hundred million—that would be extraordinary, dangerous and an upsetting thing; moreover it will be recalled that I did not dare estimate the situation for more than two years. I do not suppose that our deficits will be cured in the third year.

Hon. Mr. McGEER: They will be cured and can only be cured when Canadians develop their own products and by developing in the United States a market equivalent to our imports.

Mr. TOWERS: Some of Canada's great markets are overseas. It was from the surplus and our trade with those countries, that we managed in the past to balance our deficit with the United States. If that type of trade cannot be developed again, then, of course, Canada faces some extraordinary major changes in the volume and direction of her trade.

If, on the other hand, the U.K. and Western Europe are restored to reasonable prosperity that is a different matter. These are things in connection with which many attempts are being made by the United Nations as a whole to solve. How they will turn out, no one knows.

Hon. Mr. McGEER: Of course the great development of our production of iron, steel and gold are all available to us, and we cannot do those things by currency regulation and control.

Mr. TOWERS: That is perfectly true. And while I want to reply to the questions you address to me, Senator McGeer, I do not want to appear as a person who is propounding exchange control. It is a policy which has been adopted by the government, and I have tried to explain some of the reasons for it, as I understand them; but if someone else takes the view that even in the face of what I believe is now practically a certain reduction in our reserves to the extent that I have mentioned it is nevertheless worthwhile, and without knowing anything more about the future than we know today, to take the chance that we will not experience any capital withdrawals without control, then that is a matter of opinion.

Hon. Mr. McGEER: Another way by which we might balance the situation is by Canadians investing in the United States, taking profits and bringing them back home.

Mr. TOWERS: You mean in the way of securities.

Hon. Mr. McGEER: No, I mean in the various activities that are available. For instance, I mentioned this morning the international operations in the form of forest products.

Mr. TOWERS: That direct investment is allowed.

Hon. Mr. McGEER: But it is for export to the United States. Do you know of the New England Fishing Company?

Mr. TOWERS: No.

Hon. Mr. McGEER: That is one of the largest fishing companies on the Pacific Coast, and operates in Alaska, British Columbia, Washington and Oregon, with its main operations and headquarters in B.C. One of its heads came from Chicago and another from Minneapolis. That company has made its largest expansion in the last two years, and it assumes that the exports of both fresh and canned fish from British Columbia are going to command the best prices ever paid, and the largest demand ever known in the United States.

Mr. TOWERS: I hope so, because we have not been pessimistic about our exports to the United States.

Hon. Mr. McGEER: I again point out to you that Canadian investments in the United States, where they will offset American investments here—if dividends and interest are going to flow freely back and forth—is one way by which we might put ourselves into balance with the United States.

Mr. TOWERS: Canada has in the form of subsidiaries a number of profitable enterprises in the United States, and I hope they will increase.

Hon. Mr. McGEER: In your 1946 report you say this:—

In the later years of the war the inflow of capital to Canada from the United States became an important source of exchange. The inflow took the form mainly of the purchase of Canadian securities by United

States investors. The movement first became marked in 1942 and rose sharply in 1943 when gross sales of outstanding Canadian securities for United States dollars amounted to nearly \$200 million, or almost twice the total in 1942. While there was some falling off in 1944, the total for the year still exceeded \$100 million and in 1945 rose again to more than \$200 million.

Purchase of outstanding issues accounted for the greater part of the capital inflow although a number of new issues were also floated in the United States in connection with refinancing. Multiple currency issues guaranteed by the Dominion Government were exported in large quantities and provincial, municipal and corporation issues were also bought in substantial volume. With increased liquid reserves it was possible in 1943 to call several Dominion issues payable in U.S. currency with a par value of \$106 million in advance of their date of maturity; in addition parts of two other Dominion issues were refinanced in the United States. In 1943 a Canadian National Railway Government-Guaranteed issue aggregating \$57 millions payable in New York was called for redemption and New York pay Dominion issues aggregating \$40 million and \$115 million were called for redemption in 1945 and in January 1946 respectively.

Surely that was improving the position between Canada and the United States, was it not?

Mr. TOWERS: I would not call it improving; it was a case of going into additional debt.

Hon. Mr. McGEER: But all the securities purchased by the United States were payable in Canadian money, and only in Canadian money?

Mr. TOWERS: Not all; a certain number of them were.

Hon. Mr. McGEER: The large proportion were.

Mr. TOWERS: At a guess, I think one might say a half; but I point out that is only a guess.

Hon. Mr. McGEER: Why were we selling securities there payable in American dollars?

Mr. TOWERS: Old issues already in existence.

Hon. Mr. McGEER: That is by way of refinancing?

Mr. TOWERS: Outstanding issues with the U.S. dollar claimant features on them. Ones which were in existence prior to the commencement of the exchange control. Since that time new ones have not been created.

Hon. Mr. McGEER: Surely any securities that have been issued to finance the war have all been issued payable in Canadian dollars?

Mr. TOWERS: Yes. I am talking about securities which were in existence as of September, 1939.

Hon. Mr. McGEER: I understand American currency that came in to purchase our securities was very largely to purchase Canadian securities payable in Canadian dollars?

Mr. TOWERS: Not very largely. Originally the inflow of investments was directed through the acquisition of securities outstanding in September 1939 or issued prior to September 1939, which were payable in U.S. dollars. The amount of those, of course, is by no means unlimited, and as new ones were not being claimed the market became bare of them. Then the American investor turned their attention to investment in Canadian dollar securities, and in 1944 and 1945 purchases were quite heavy, although by no means entirely in Canadian domestic issues.

Hon. Mr. McGEER: Could you give me a statement of the amount of Canadian securities which have been acquired during the last five years, payable in Canadian dollars?

Mr. TOWERS: No, I cannot separate the two things.

Hon. Mr. McGEER: Why can you not separate them?

Mr. TOWERS: Because I have not got the information at the moment.

Hon. Mr. McGEER: How can you arrive at a conclusion, if you cannot separate them?

Mr. TOWERS: Because I know of a number of purchases sufficient to make me believe with good foundation that the purchases of Canadian pay securities have taken place to the extent of at least \$200,000,000. If I am asked to be precise, and say \$250,000,000 or \$325,000,000, I cannot say. I might be able to get the information, but I am not certain.

Hon. Mr. McGEER: I should like to have the information, because I am told that the reason the Americans invested in our Canadian securities was that the interest rate was higher and they looked upon the future of Canada as secure.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: And with the ten per cent premium, it was an inducement which made an excellent investment. I have had that explanation from innumerable salesmen interested in the trade.

Mr. TOWERS: That is true.

Hon. Mr. McGEER: And with the dollar parity my information is that the marketing of Canadian securities payable in Canadian dollars has fallen off in the United States.

Mr. TOWERS: To a large measure I should think that is true.

Hon. Mr. McGEER: Again I say it is difficult for me to understand why an action of that kind should be taken by the Canadian government when that gift was what apparently you fear we are going to need so badly in the future.

Mr. TOWERS: I would hardly suggest that we follow a course of action in perpetuity which would involve a substantial increase in our already enormous debt to the United States, if we can possibly avoid it.

The CHAIRMAN: I do not want to interject, but it seems to me that we have been on that ground for some time and the witness has given his opinion. Unless he will now confess that he is wrong and Senator McGeer is right, we cannot get any more from him on this point.

Hon. Mr. CAMPBELL: Mr. Chairman, I was wondering if we have not sufficient facts on the record now to enable the committee to discuss what report it should make. I know that in cross-examination it is difficult for counsel to refrain from putting proposals and getting answers in the form of arguments between counsel and witness. It seems to me that perhaps we have had almost enough evidence, unless there is some further evidence that Senator McGeer may require to make out his case.

The CHAIRMAN: I do not know whether your opinion is shared by the majority of the members of the committee. I would not like to curtail the cross-examination by Senator McGeer, but if he continues I would suggest that he try to get information which is not already on the record.

Hon. Mr. McGEER: I understood from Senator Lambert that he had taken the position, which I certainly agree with, that while we have heard evidence on this thing from one side, the side of the men who will be administering the Foreign Exchange Control Board, we have heard nobody else. There are of course in Canada a large number of people vitally interested in these proposals, people whose businesses are greatly affected by them. There is the timber

industry in British Columbia, the fishing industry, the mining industry—all are affected by this control. The gold mining industry is particularly affected. If we are going to hear just one side, we will not find a solution to the problem. We are concerned here not merely with the subject-matter of this bill, but with a subject-matter which involves the trade relations between Canada and the United States. That is a much bigger thing.

The CHAIRMAN: But as I understand it, the subject-matter under consideration is foreign exchange control. There are, no doubt, alleys leading up to this subject-matter, but I think you have travelled some distance along them. I do not want to curb your cross-examination of the witness, but it seems to me that for some time you have been trying to get from him a statement that you are right and he is wrong. I do not expect he will give you that solace.

Hon. Mr. McGEER: I do not expect it from this witness, but I might get it from other witnesses equally competent, if they are called.

The CHAIRMAN: I would invite you to continue your examination, but not to spend too much time on a point which appears to me to have been covered, namely, as to why the witness considers there are reasons for a foreign exchange control. I think the main part of the cross-examination has been on that, and the witness has given his reasons why in his opinion the board as proposed in the bill is necessary.

Hon. Mr. McGEER: I expected he would support the bill.

The CHAIRMAN: He has given to the committee the reasons why in his opinion the bill should be passed. You may have a different opinion; you may think those reasons are not good, or are good only to some degree. We have been waiting to see if the witness would give you other reasons than he has already given, but for some time he has not added to his reasons.

Mr. TOWERS: That is so, Mr. Chairman. I have not got any more reasons.

Hon. Mr. BENCH: Mr. Chairman, on the point raised by Senator McGeer, may I make a statement? Whether this bill passes or not, we have foreign exchange control for the time being, and probably as long as the Emergency Transitional Powers Act continues in force. I would certainly hope that at this stage we are not to be called upon to hear representations from people throughout the country who may be opposed to the provisions of this bill. My understanding certainly was when we adopted the rather unusual procedure of referring the subject-matter to the committee that it was for the purpose only of hearing the government side, so to speak, as to whether or not in principle this bill should get second reading, and then perhaps be referred back to the committee for study of its details. I personally would be rather shocked at the suggestion that we should at this stage hear representations from all and sundry as to why there should or should not to be a foreign exchange control measure of this kind. Even at this time I find myself reposing in a rather wide area of doubt as to what is in the best interests of the country, in respect of this particular piece of legislation.

Hon. Mr. McGEER: I agree with that, but the point is whether or not we should at this stage agree that we are to hear only one side. The bill was introduced in the other house on the 17th of June, went before the Banking and Commerce Committee over there and came over to the Senate on the 12th of August. We have heard one side now, and we have certainly heard enough to indicate that there is a wide field for investigation before we decide to clamp this type of rigorous control upon the Canadian people. The report of the Foreign Exchange Control Board dated March, 1946, gives a summary of the board's powers as they are at present and as they can continue under order in council until the next session of parliament. They are set out on page 11:—

All foreign exchange received by residents of Canada must be sold to an authorized dealer. In addition, on April 30, 1940, the Foreign Exchange Acquisition Order was passed requiring all residents of Canada to sell to the Board all foreign exchange in their possession,...

The CHAIRMAN: Every senator has the bill before him, and it is the subject-matter of the bill that we are to consider. Senator McGeer raised a point as to hearing witnesses from outside. It is, of course, for the committee to decide whether it wants to hear witnesses from outside, and unless it expresses a desire to do so I do not think we should call any other witnesses.

Hon. Mr. McGEER: I am not a member of the committee. I made that suggestion simply in answer to the suggestion of Senator Campbell that we should close the examination now.

The CHAIRMAN: I would ask you to proceed with the examination in the light of the observations that have been made.

Hon. Mr. McGEER: Mr. Towers, have any approaches been made to the authorities in Washington, that is the trade department or the financial departments, to secure co-operation between the United States and Canada in the matter of sustaining the value of the Canadian dollar along with the American dollar and the balancing of trade between the United States and Canada?

Mr. TOWERS: I do not quite understand the first part of the question, but I think perhaps in the main it relates to possible approaches in regard to the stimulation of trade between the two countries.

Hon. Mr. McGEER: Well, we had the Ogdensburg agreement and the Hyde Park agreement, and we have the joint defence arrangement, and we have been associated in many other projects. I am wondering if any approaches have been made to get co-operation in stabilizing our currency in relation to United States currency.

Mr. TOWERS: I think that is a matter that should be referred to the minister.

Hon. Mr. ABBOTT: I am sorry, I was not following the question.

Hon. Mr. McGEER: In stabilizing our Canadian dollar with the American dollar, I suggested to the Governor that we might be able to work out by agreement something of the same kind of arrangement that we had in the Hyde Park and Ogdensburg agreements, and that we have in the joint defence agreement, which is continuing.

Hon. Mr. ABBOTT: That is just an advisory body, the joint defence board.

Hon. Mr. McGEER: But it is still operating, I understand.

Hon. Mr. ABBOTT: Yes, a permanent joint board.

Hon. Mr. McGEER: I was wondering if approaches had been made to secure by agreement measures of security.

Hon. Mr. ABBOTT: So far as I am aware, there have been no discussions with the United States as to bilateral trade or exchange agreements. The Hyde Park agreement, as you know, Senator, was a wartime arrangement.

Hon. Mr. McGEER: Some of us are somewhat concerned about this type of regulation, because it does not seem to be in line with the Bretton Woods agreement, but seems to be the kind of thing that we should be developing along with England if we were going to go into an economic war with the United States, which I think would be disastrous in the future. You see, this is the very kind of power that Schacht secured from Hitler.

The CHAIRMAN: I would ask the honourable senator not to give evidence himself, but to ask questions.

Hon. Mr. McGEER: I am asking that question.

Hon. Mr. ABBOTT: You are making a statement, Senator, not asking a question.

Hon. Mr. McGEER: Has any approach been made?

Hon. Mr. ABBOTT: On what subject?

Hon. Mr. McGEER: To the United States, on the subject of stabilizing the Canadian dollar.

Hon. Mr. ABBOTT: Not as far as I know.

Hon. Mr. McGEER: On the subject of balancing trade with the United States.

Hon. Mr. ABBOTT: There is no use in discussing that. That involves reciprocating goods and services. We do not want to do that by government action. That is a matter between private traders on both sides of the line. Certainly there has been no discussion as to entering into a bilateral trade agreement with the United States, to buy certain quantities of American commodities and to sell them certain quantities.

Hon. Mr. McGEER: We had an arrangement between the Government of Mr. King and the Government of Mr. Roosevelt. Mr. King went to Washington and made an arrangement.

Hon. Mr. ABBOTT: The only arrangement I am aware of is the arrangement under the Hyde Park agreement, whereby the United States agreed to take from Canada certain materials which were needed for the prosecution of the war, and a large portion of which were needed for other countries under lend-lease.

Hon. Mr. McGEER: This was before the war, immediately following the election of President Roosevelt, when the President got the power to reduce the duties by 50 per cent; and the duties were reduced, and it was through that more than anything else, without any controls at all, that we got the stability that we enjoyed during the depression.

Hon. Mr. ABBOTT: Oh well, of course, if you are speaking in generalities, there are continual discussions in respect to promoting trade between this country and the United States as well as with all other countries. There is a conference in October of this year.

Hon. Mr. HAYDEN: Has the old trade agreement made last year lapsed?

Hon. Mr. ABBOTT: I do not know.

Hon. Mr. McGEER: Wouldn't it be better to let this legislation stand over until we find out the results of that October agreement? We will know when the next Parliament sits what the results of that great international conference will be.

Mr. TOWERS: I think the October conversations are of a very preliminary and historical character.

Hon. Mr. McGEER: But am I incorrect in stating that one of the hopes is that we are going to be able to bring about international methods of balance of trade and of stabilizing international exchange? Is not that great international conference, even if it is only preliminary, supplementary to the Bretton Woods program?

Mr. TOWERS: Yes, exactly.

Hon. Mr. McGEER: Then, I ask you, as Minister, would it not be the part of wisdom for Canada to hold this measure over until the situation clarifies, and then we might, without offence to the United States or to anyone, and without putting repressions upon our people that are objectionable to so many, work out a program that would be much more satisfactory and one which is less fraught with danger or possibilities of danger? Is this not such an occasion? Let me put this question to you fairly and frankly, that nothing will be lost by our taking time. Why all the hurry in this thing?

Mr. TOWERS: I think that point has already been dealt with by the minister; but as for the situation clarifying itself in the course of the next six or nine months, that, I think, is a hope which passeth understanding.

Hon. Mr. McGEER: Well, would anything be lost by our taking time?

Mr. TOWERS: Again, I say that the minister has explained in regard to the situation; perhaps he might say: Is anything to be gained by our waiting?

Hon. Mr. ABBOTT: Yes, I think I covered that aspect of it this morning or this afternoon; I think I mentioned that placing foreign exchange control in statutory form was first proposed in 1945 and it has been considered as government policy since that time; that it is desirable to put this measure into statutory form and is necessary for the interest of the people of Canada. I quite appreciate that that is a matter of opinion; I am expressing my own opinion as a member of the government and I assume that you hold a different opinion. I do not know that our opinions will ever coincide.

Hon. Mr. McGEER: Let me ask you just how much have you paid for the land you have acquired for the new building?

Mr. TOWERS: \$1,000,000 for the land for the Bank of Canada.

Hon. Mr. McGEER: How much do you propose to expend on the building?

Mr. TOWERS: That I cannot tell you as yet because we have not sufficiently developed the plans. Because of the shortages of material and so forth we, naturally, do not propose to start work in the immediate future.

Hon. Mr. McGEER: But in any event a building to be built on a \$1,000,000 piece of land would be a very substantial building?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Now can I get from you a statement of the number of employees of the Foreign Exchange Control Board, what salaries are paid to them, and what wages are paid?

Mr. TOWERS: That is shown.

Hon. Mr. McGEER: In general?

Mr. TOWERS: In the back pages of the report.

Hon. Mr. McGEER: But it does not give any details; I want to know, for instance, how many people you employ there above a salary of \$5,000?

Mr. TOWERS: Yes, I can give you that; I can prepare for you a list of those officials and their salaries.

Hon. Mr. McGEER: And I would like to have a list of the officials and their salaries above, say, \$2,500.

Mr. TOWERS: You mean the names

Hon. Mr. McGEER: I do not know; I certainly want the names of the head officials, who they are. You see, this is not in the civil service.

Mr. TOWERS: That is right.

Hon. Mr. McGEER: And the veterans' preference does not apply to it. Altogether, how many employees have you got in the Bank of Canada and the Foreign Exchange Control Board? I think it is a matter of interest to this committee to know what this thing is going to cost and what it is costing today.

Mr. TOWERS: The cost is shown here.

Hon. Mr. McGEER: What is that?

Mr. TOWERS: This is the annual report.

Hon. Mr. McGEER: Yes, but is it not an interlocking thing between the Bank of Canada? You supply the staff?

Mr. TOWERS: No; as matters stand, the Foreign Exchange Board pays for its own staff.

Hon. Mr. McGEER: And you supply the staff?

Mr. TOWERS: We supply a certain number.

Hon. Mr. McGEER: You supply a certain number?

Mr. TOWERS: The salaries paid to them are charged the Foreign Exchange Control Board if they work full time; but there are a few part-time advisers, and in that case the Foreign Exchange Control Board does not pay.

Hon. Mr. McGEER: In order to get a proper picture we would have to have the salaries charged to the Bank of Canada for the Foreign Exchange Control Board. Has the number not been reduced from five hundred and something to 202. Have those people gone back to their employment in the Bank of Canada?

Mr. TOWERS: No, they were those who came entirely from outside. They have gone back to their original employment.

Hon. Mr. McGEER: Was the total number of the staff reduced?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Could you give us the numbers of the staff and the costs for the Foreign Exchange Control Board and the Bank of Canada?

Mr. TOWERS: Yes.

Hon. Mr. McGEER: As of 1939 to 1945.

Mr. TOWERS: Yes, the Bank of Canada information in that respect was, of course, brought up to date in 1944 in the hearings of the Banking and Commerce committee in that year; but I could give you fresh figures certainly.

Hon. Mr. McGEER: Yes; these should be brought up to date and we could have the figures of the Foreign Exchange Control Board employees and the Bank of Canada employees from 1939 to 1945 brought up showing the interchange, if there is any.

Mr. TOWERS: Well, showing the two things and with the exception of the few people who give part time to the Foreign Exchange Control Board; but as I say, there is no intermingling so far as costs are concerned.

Hon. Mr. McGEER: There was one other point I wanted to examine you on in the matter of our foreign exchange position. Up until the present time we have been doing a great deal of financing, or up, until, let me say, the first war we did a great deal of our financing for Canada abroad; that is, our provinces, our municipalities, and our dominion government, and our railways borrowed abroad very largely.

Mr. TOWERS: In the United Kingdom, speaking of the time before the first war, yes; but very little, before 1914, in the United States.

Hon. Mr. McGEER: From 1914 to 1918 we developed the practice of financing the war out of our own financial resources.

Mr. TOWERS: Yes, supplemented in that first war by some borrowing in the United States.

Hon. Mr. McGEER: And in this war we developed the power to finance the war almost exclusively in Canada out of financial resources of our own.

Mr. TOWERS: Exclusively in Canada.

Hon. Mr. McGEER: Exclusively in Canada; and we developed the technique not only of financing our own war program but of financing the heavy capital investment in Canada that was required, and we did that out of our own financial resources.

Mr. TOWERS: Yes. It must be stated, of course, that the Hyde Park agreement was a very important factor in rendering it unnecessary for us to borrow United States dollars.

Hon. Mr. McGEER: Yes, and at the same time we have reduced our foreign indebtedness abroad by repatriating securities from both the United Kingdom and the United States.

Mr. TOWERS: From the United Kingdom, yes; but the balance, of course, of American holdings of our securities has increased due to their purchases in the open market, not by direct borrowing. But when one makes allowance for additional holdings of cash, we were "even-Stephen" with the United States at the end of the war compared to the beginning, and we reduced our debt to the United Kingdom.

Hon. Mr. McGEER: We reduced our debt to the United Kingdom and we reduced our debt to the United States payable in American dollars.

Mr. TOWERS: That I cannot say without seeing if I can get the separation between Canadian pay and foreign pay in their purchases of Canadian market securities during that period.

Hon. Mr. McGEER: And in addition to that we have been able to finance loans to the United Kingdom and to different foreign countries to the extent of \$2,000,000,000 for the post war period?

Mr. TOWERS: In the post war period, not very far from \$2,000,000,000; that is right, which are not yet used.

Hon. Mr. McGEER: And during the process of the war we financed gifts to the United Kingdom and to mutual aid to the extent of nearly \$4,000,000,000.

Mr. TOWERS: I would like to check on that; I do know it was a large amount, the mutual aid and that original gift. The mutual aid to the sterling area originally was \$3,175,000,000. In addition to that there was a loan which at the end of 1945 was \$561,000,000. That \$3,700,000,000 is close enough.

Hon. Mr. McGEER: And our settlement of the war investments of Britain over here came to another \$500,000,000 or \$600,000,000, where we wrote off what Britain owed us for the war.

Mr. TOWERS: Is that the repatriation you are referring to?

Hon. Mr. McGEER: No, I am talking about the wiping off of the British Empire Air Training Scheme, which was \$425,000,000.

Mr. TOWERS: \$425,000,000, yes.

Hon. Mr. McGEER: Therefore, roughly speaking, for mutual aid, in addition to our own war program and the general settlement of the loan, we have financed Britain and foreign countries to the total of \$7,000 million. Isn't that right?

Mr. TOWERS: I could not follow all those items; I am sorry; the mutual aid was something like that, in 1937, and the write off in 1941, and the other items were—

Hon. Mr. McGEER: There was a \$3 billion one; and a \$450 million to the British Empire Air Training Scheme; and \$500 million, the balance of a loan to Britain, and other incidental items, that would come to \$4 billion.

Mr. TOWERS: \$4 billion odd.

Hon. Mr. McGEER: And \$2 billion in the way of foreign loans.

Mr. TOWERS: But carrying into the post war period.

Hon. Mr. McGEER: Yes.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: That comes to something between \$6,000 million and \$7,000 million that we in Canada have financed out of our own financial resources.

Mr. TOWERS: Yes, or which we are in the process of financing now.

Hon. Mr. McGEER: I suggest to you that we have developed that financial power as a result of our use of the facilities of the Bank of Canada and other financial techniques which we have developed in the last ten years.

Mr. TOWERS: Including, notably, a tremendous savings effort on the part of our people during the war.

Hon. Mr. McGEER: Our people have got an enormous volume of cash in their possession. In addition to that, our cash resources in the bank have increased by double since the war started.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Our holdings of liquid securities in the possession of our people have more than doubled since the war began.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: We have increased the issue of Bank of Canada paper by nearly \$1,500,000,000; that is right?

Mr. TOWERS: Yes, you mean, note issue?

Hon. Mr. McGEER: Yes.

Mr. TOWERS: About \$1,000,000,000 say.

Hon. Mr. McGEER: About \$1,000,000,000; that is something three times. Now, I suggest to you that we are in a position in the future to finance all capital investments for Canada, that is, for cities, for municipalities, for public utilities, and for national government programs, by using our own financial techniques without borrowing abroad.

Mr. TOWERS: I would hope so.

Hon. Mr. McGEER: You would hope so. Now, had we followed that course previous to accumulating these debts you spoke of, we would not be short of American dollars or anything else, would we?

Mr. TOWERS: We have never received American dollars in the first instance and never had them to spend. What we have done in the interval I could not tell you.

Hon. Mr. McGEER: You told us that Canada is the most heavily indebted country in the world.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: How much is our debt external to it?

Mr. TOWERS: Those are the figures which we mentioned a moment ago to all countries including the value of their contract investments in Canada in subsidiary plants and so on; \$6,700,000,000.

Hon. Mr. McGEER: And what is the investment of other countries here to offset that?

Mr. TOWERS: That is the investment of other countries in Canada.

Hon. Mr. McGEER: What investments have we got abroad offsetting that?

Mr. TOWERS: At the end of 1945 probably something of the order of \$1,000,000,000.

Hon. Mr. McGEER: So we have a net foreign debt position against that of \$5,000,000,000; is that right?

Mr. TOWERS: \$5,700,000,000.

Hon. Mr. McGEER: \$5,700,000,000.

Mr. TOWERS: Yes.

Hon. Mr. McGEER: Now, how are we going to liquidate that debt?

Mr. TOWERS: I should say by the sweat of our brow and a lot of luck.

Hon. Mr. McGEER: By the sweat of our brow and a lot of luck?

Mr. TOWERS: Over many generations.

Hon. Mr. McGEER: All right; I will suggest to you then, if we had let the flow of American currency continue to come into Canada and reinvested that money in the United States, that would have been one way of offsetting the investments of the Americans in Canada; would it not?

Mr. TOWERS: You mean that our investments in the United States from which we receive money would earn us more than their investments in Canada?

Hon. Mr. McGEER: Yes.

Mr. TOWERS: Well, if their investments were in $2\frac{1}{2}\%$ bonds, and our business enterprises were successful, yes; but obviously these things do not take place on a tremendous scale over night.

Hon. Mr. McGEER: No?

Mr. TOWERS: Of course, Canadian enterprises might wish to develop business enterprises in the United States akin to the ones they have in Canada or to get better sources of supply, or to encourage Canadian exports but are unable to do so as matters stand to-day.

Hon. Mr. McGEER: If we could secure, as we have secured in the West, a very large flow of Americans coming in to Canada and bringing their money, not only as settlers on the land but as builders of businesses, that would do it too, would it not?

Mr. TOWERS: If they become Canadians, you mean, and live here and have their profits here and pay their taxes here.

Hon. Mr. McGEER: Yes.

Mr. TOWERS: I think that helps.

Hon. Mr. McGEER: Why put restrictions against that kind of thing?

Mr. TOWERS: There are not any restrictions.

Hon. Mr. McGEER: There are. This whole regulation is a barrier to that kind of thing.

Mr. TOWERS: I have not seen it acting as such and I can only judge from my own experience.

Hon. Mr. McGEER: We got this flow without any loss during the time when there were no controls and you have given to me—I do not know how the rest of these senators have taken it—the most unoptimistic picture of our future with the United States as anything I have ever heard.

Mr. TOWERS: I would not call it unoptimistic. Canada is doing a tremendous trade these days; there is high employment and national income; under those circumstances we are buying a great many goods in the United States and selling a great many goods to other countries; but we are selling quite a lot on credit and this is a period during which we will have to make use of a substantial amount of United States dollars on balance. In other words, if the countries of the world, particularly those which were disrupted by war, get on their feet again and get going with efforts to establish a multilateral and higher trade, then there will be a successful outcome.

Hon. Mr. McGEER: Again I put that situation to you; that it would be much better to bring in a policy of legislation six months from now or a year from now without suffering any loss.

Mr. TOWERS: It would be long after that before the situation clarifies itself, in my humble opinion.

The CHAIRMAN: Senator Davies, you have a question?

Hon. Mr. DAVIES: I have only one question I would like to ask the minister. Have you received any representations at all from any business organizations with regard to this bill; any objections to it?

Hon. Mr. ABBOTT: No, not so far as I am aware. I mentioned the other day that when this bill was before the committee in the house, the chairman of the house committee wrote to the Bankers' Association and asked if they cared to make representations; and I placed their letter on the record yesterday.

Hon. Mr. DAVIES: There has been evidence since that the bankers have profited to some extent by this legislation. Have you heard from the Canadian Manufacturers' Association?

Hon. Mr. ABBOTT: No; there has been no representation made to the government either for or against the bill by the Canadian Manufacturers' Association.

Hon. Mr. DAVIES: Isn't it fair to assume that those who will be called upon to administer the foreign exchange control would be more careful not to offend the citizens of Canada if they were administering an order in council than if they were administering an act passed by both houses of parliament?

Hon. Mr. ABBOTT: I do not know, senator; I would be almost inclined to think they would be more careful in administering an act than in administering an order in council to which so much objection was taken.

Hon. Mr. DAVIES: I have been very interested in this discussion but I have the feeling from Mr. Towers that he is too optimistic about the number of Lord Chesterfields who might be administering this act all over Canada; remember they are just mine-run individuals and that it will be mine-run individuals who will be handling it; and certainly the restrictions in this act are very, very severe. That is why I want to know if there have been any objections from any business organizations?

Hon. Mr. ABBOTT: None at all, senator, so far as I am aware; and I have been following this legislation all the time.

The CHAIRMAN: Senator McLean, have you any questions?

Hon. Mr. McLEAN: I think Mr. McGeer has covered it pretty well, but there are one or two questions I would like to ask Mr. Towers. With regard to our understanding with the other nations, the United Kingdom and the United States, according to a report of the Foreign Exchange Control Board, before the war we had in Europe about \$2,500,000,000 of securities or obligations. Is that right?

Mr. TOWERS: I would just like to get that.

Hon. Mr. McLEAN: And we repatriated—

The CHAIRMAN: Just a minute.

Mr. TOWERS: Yes, I follow you on that statement.

Hon. Mr. McLEAN: We repatriated back about \$1,000,000,000 leaving us \$1,500,000,000 of obligations in Europe.

Mr. TOWERS: Yes.

Hon. Mr. McLEAN: In other words, we owe Europe about \$1,000,000,000.

Mr. TOWERS: That was the United Kingdom.

Hon. Mr. McLEAN: That was the United Kingdom. We have an obligation of \$500,000,000; and after we repatriated the securities for that half billion our only obligations to Europe would be about \$1,000,000,000.

Mr. TOWERS: Yes, with the United Kingdom.

Hon. Mr. McLEAN: With the United States our understanding is practically the same as it was before the war as far as debts are concerned; and with the resources you now have, it offsets the increase in debts over there?

Mr. TOWERS: Yes.

Hon. Mr. McLEAN: In the early days of the board there was only a short time given for an investor here in Canada who sold his securities in the United States. He had to reinvest within a certain time, or else turn the proceeds over to the board.

Mr. TOWERS: Yes.

Hon. Mr. McLEAN: That is where probably most of that \$360,000,000 comes from in your statement here, representing securities sold in the United States, for which we received American funds.

Mr. TOWERS: I should think that a substantial portion of it represented sales where the investor did not, in fact, desire to reinvest.

Hon. Mr. McLEAN: That of course was invested probably at 3 per cent or 4 per cent against treasury bills or perhaps $\frac{1}{2}$ of 1 per cent to-day. As far as the income of the country goes, that \$1,500,000 of liquid assets is a luxury all right; but in private enterprise it was invested at a higher rate.

Mr. TOWERS: To the extent that the investments were made by a private investor. He certainly did not, in general, go in for that form of securities; that is right.

Hon. Mr. McLEAN: Yes; the average depreciation of securities during the last three or four years has been about 33 per cent. Had those securities been retained by private investors, they would get no doubt somewhere nearer the average. This clause 43 about which there has been some discussion, is that something new or something which is carried on from the order in council?

Mr. TOWERS: It is carried on from the order in council.

Hon. Mr. McLEAN: That is incorporated in the act with something that has been there; this is the first time it has been in the act?

Mr. TOWERS: Yes.

Hon. Mr. McLEAN: The experience of the United States in opening up the income tax has not been any too good; not for the income tax, although it may have been good for some other departments; that is the information I have received. Would there be any special desirability to have a representative of industry on the board? We have voted very large loans to re-establish this foreign trade, to a great extent moneys raised by the taxpayers. We put that money in the pot, so to speak, and we hope to re-establish trade. Now these debtor nations do not take their money in victory bonds; they take commodities, and those commodities are produced by industry. Industry has an estate in foreign trade; and we who represent the people or the taxpayers vote these sums of money for the foreign trade stream. We have the responsibility there. Would there be any special objection, or could we consider it as government policy, to have a representative of industry sitting on the board, representing those who produce the real wealth? We do the bookkeeping and the other branches of it, but those who produce the real wealth—would there be any objection to their having a representative?

Hon. Mr. ABBOTT: I think the answer to your question is that the Foreign Exchange Control Board is solely an administrative body established for the purpose of carrying out the foreign exchange control policy which is laid down

from time to time by the government, and therefore the only appropriate officials to perform purely administrative functions of this kind are government officials. Your public servants are responsible to the government of the day and in addition, of course, there is the further point that in carrying out its duties the board must necessarily have before it information as to the exchange position and other information which is not currently available to the public generally; and it would not be proper that such information should be available to certain members of the public by virtue of their being members of the board, since it would place them in a privileged position with respect to their competitors.

Hon. Mr. McLEAN: Of course anything in the nature of a government board would be subject to the rules of secrecy. But in my experience I have found that sometimes government boards do things without realization of the repercussions through the country, whereas practical businessmen would know how they were going to work out. I think if we had more men of practical business experience on government boards it would help.

Hon. Mr. ABBOTT: I agree. I think the government should consult the industry and business of the dominion to assist it in determining policy; but I do not believe that an administrative body of this kind, administering government policy, can properly be composed of other than public servants.

Hon. Mr. McLEAN: Section 34 refers to managers of companies established outside of Canada. Now, managers may have no stake in the capital of the business, only a nominal holding of one share. Under this section a manager might find himself in an embarrassing position. That section should either be clarified or taken out of the bill.

Mr. TOWERS: Can you say why that is in the section, Mr. Tarr?

Mr. TARR: No, I cannot.

Mr. TOWERS: I must say I cannot answer your question, Senator McLean, but I hope to be able to do so.

Hon. Mr. McLEAN: It strikes me that the manager of the business would be just a paid servant, and he might be put in a very embarrassing position if asked to do the things specified in the section.

I think it was mentioned by you, Mr. Towers, that if securities were left in private hands it might be difficult to take them over, they might be sold when the market was not in a good position to absorb them. Did not the United Kingdom gradually lower their restrictions because it was ruining companies?

Mr. TOWERS: The United Kingdom took over those securities from their owners and then sold a certain number in the open market.

Hon. Mr. McLEAN: I appreciate the remarks of Senator McGeer. Mr. Henry Wallace, the Secretary of Trade and Commerce in the United States, is an outstanding liberal—with a little "l". It seems to me, Mr. Towers, that the statement you gave of how our trade is going out of balance is something that it would be well worth our while to take up with Washington. The Americans want to sell to us; we want to sell to them. Foreign trade, as I have always understood it, is a two-way street, and the more we keep it in balance the better it is for both parties. Foreign trade is done on a fairly narrow margin, and if trade between nations can be kept anywhere near balance without getting into debt on either side, it is certainly a great ideal to work towards. In the course of the small business I have had back and forth with the United States I have always found the officials at Washington extremely friendly towards Canada. If anything can be done at this stage, will you point out to the fellows at Washington that it is to their advantage as well as ours that this trade should be kept on an even keel?

The CHAIRMAN: Senator Roebuck?

Hon. Mr. ROEBUCK: Not at this late hour, but I will join in the discussion.

The CHAIRMAN: Senator Dessureault?

Hon. Mr. DESSUREAULT: No questions.

The CHAIRMAN: Senator Wilson?

Hon. Mrs. WILSON: No, thank you.

The CHAIRMAN: Senator Hayden?

Hon. Mr. HAYDEN: No questions, thanks.

The CHAIRMAN: Senator Sinclair?

Hon. Mr. SINCLAIR: I have a motion to offer, but I do not wish to proceed with it if any senator wishes to continue the examination.

I think the time has come when we might consider this motion:—

That the Chairman be instructed to report back to the house that we have examined into the subject matter of the bill.

Hon. Mr. KINLEY: Mr. Chairman, I have a matter that I want to bring before the committee, and I should like to do it now.

The CHAIRMAN: We will suspend the motion.

Hon. Mr. KINLEY: Subsection 2 of section 2 reads:—

The Board, may, by regulation, provide that lawful money of Newfoundland and securities issued by the government of Newfoundland or by any society, syndicate, company or corporation incorporated in Newfoundland, or if unincorporated, whose head office is in Newfoundland, shall be deemed to be "Canadian currency" and "Canadian securities", respectively, for the purpose of this Act.

should like to ask Mr. Towers what he had in mind when that was drafted.

Mr. TOWERS: That is the way in which control was operated all during the war. It is rather an unusual situation arising from the fact that Newfoundland is served exclusively by branches of Canadian banks, and, as you know, they use Canadian currency in all its forms. So from a financial point of view Newfoundland is within the Canadian system of currency.

Hon. Mr. KINLEY: In that the Canadian banks control the situation?

Mr. TOWERS: In that the deposits of the people in Newfoundland are in terms of Canadian dollars, and the currency they have in their pockets is Canadian dollars. So it was necessary to operate the two controls in the closest and most complete co-operation. There is an exchange control in Newfoundland. We have no means of saying to the Newfoundland government what it should do, but there has been complete and absolute co-operation since the start of the war.

Hon. Mr. KINLEY: Will the Canadian banks in St. John and other ports in Newfoundland be agents of your control board, that is, authorized dealers?

Mr. TOWERS: They are authorized dealers of the Newfoundland Control board. I do not think it is called a board, but whatever it is.

Hon. Mr. KINLEY: What you have in mind in this section is that there will be a free flow of money as between Newfoundland and Canada?

Mr. TOWERS: Absolutely.

Hon. Mr. KINLEY: There will be no restrictions?

Mr. TOWERS: None whatever.

Hon. Mr. KINLEY: How do you propose to control the situation in Newfoundland as to the Canadian banks? You stop the flow of notes from Canadian banks to other countries.

Mr. TOWERS: If there was a note flow to Newfoundland it would be perfectly all right, because it is not going outside the Canadian currency field. It is not costing us U.S. dollars.

Hon. Mr. KINLEY: I am an exporter of goods to Newfoundland, and I appreciate that it is very desirable to have Canadian currency there. May I ask what is our trade with Newfoundland? The balance is heavily in Canada's favour is it not?

Mr. TOWERS: That is my recollection, Senator Kinley.

Hon. Mr. KINLEY: There will be no permits necessary for sending money to Newfoundland?

Mr. TOWERS: No.

(The committee proceeded to discussion of the bill.)



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